TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~227.~~ 37

A. S. KING, A. BUTLER, AND C. THURLOW, LIBELLANTS AND APPELLANTS,

vs.

THE PROCEEDS OF THE SALE OF THE PROPELLER LADY FRANKLIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 26, 1867.

SUPREME COURT OF THE UNITED STATES.

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A. S. KING, A. BUTLER, AND C. THURLOW, LIBELLANTS AND APPELLANTS,

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1 Pleas in the Circuit Court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in said district, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, and judge of said Circuit Court, presiding, and Hon. Thomas Drummond, district judge of said district and associate judge of said Circuit Court, on Tuesday, the eighth day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States the ninety-second.

WM. H. BRADLEY, *Clerk.*

A. S. KING, A. BUTLER, and C. THURLOW,
vs.
PROCEEDS OF PROPELLER LADY FRANKLIN.
} Appeal in admiralty.

Be it remembered that on the twenty-fifth day of March, in
2 the year of our Lord one thousand eight hundred and sixty-seven, came A. S. King, A. Butler, and C. Thurlow, by Robert Rae, esq., their proctor, and filed in the clerk's office of the Circuit Court of the United States for the northern district of Illinois the certified transcript of the record and proceedings had in said entitled cause in the District Court of the United States for said northern district of Illinois, which said transcript is in the words and figures following, to wit:

3 Pleas in the District Court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of said District Court, on Thursday, the tenth day of January, in the year of our Lord one thousand eight hundred and sixty-seven, in the December term of said court, A. D. 1866, and of our independence the ninety-first year.

WM. H. BRADLEY, *Clerk.*

A. S. KING, A. BUTLER, and C. THURLOW,
vs.
PROCEEDS OF PROPELLER LADY FRANKLIN.
} Admiralty.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

Be it remembered that on the fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty-five, came A. S. King, A. Butler, and C. Thurlow, libellants, by Robert Rae, esq., their proctor, and filed in the office of the clerk of said District Court of the United States, at Chicago, in said district, their libel against the proceeds of the sale of the propeller Lady Franklin, respondent, and also at the same time filed their stipulation for costs in said
4 entitled cause, which said stipulation and libel are respectively in the words and figures following, to wit:

District Court, June term, A. D. 1865.

Stipulation.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Whereas a libel was filed in this court on the fifteenth day of June, A. D. 1865, by A. S. King, A. Butler, and C. Thurlow, against the proceeds of the sale of the steamer Lady Franklin, for the reasons and causes in the said libel mentioned, and praying that the same may be condemed to answer the prayer of the libellant; and the said libellant, and Sam'l T. Atwater, and Robert Rae, sureties, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or their sureties, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall pay all such costs as shall be awarded against by this court, or in case of appeal by the Appelate Court.

A. S. KING,
A. BUTLER,
And C. THURLOW.
5 By S. T. ATWATER.
SAM. T. ATWATER.
R. RAE.

Taken and acknowledged, this 15th day of June, A. D. 1865, before me.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Samuel T. Atwater, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

SAM. T. ATWATER.

Sworn this 15th day of June, A. D. 1865, before me.

R. RAE, *U. S. Com.*

[5-cents rev. stamp, cancelled.]

Endorsed: Filed June 15th, A. D. 1865. Wm. H. Bradley, clerk.

6 *Libel.—In admiralty.*

To the Hon. Thomas Drummond, judge of the United States District Court for the northern district of Illinois:

The libel of A. S. King, A. Butler, and C. Thurlow, of the city of Portland, in the State of Maine, traders in the said city of Portland,

under the firm, name, and style of King, Butler & Thurlow, against the proceeds of the sale of the steamer Lady Franklin, now in the registry of this honorable court, in a cause of contract, civil and maritime, allege as follows, to wit:

First. That the said steamer Lady Franklin is and was at the time when the said proceeds were paid into the registry of this honorable court, a vessel of more than twenty tons burthen, and at the time when the cause of action, hereinafter stated and set forth, arose, was enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States upon the lakes and navigable waters connecting said lakes.

Second. That on or about the ninth day of November, in the year of our Lord one thousand eight hundred and sixty-three, the said steamer, and divers other steamers and vessels, were advertised and known in the city of Milwaukee, in the State of Wisconsin, as the Grand Trunk railway steamers, and engaged and employed as
7 common carriers for hire of goods and chattels between ports and places in different States and Territories of the United States. And one H. Courtney was the advertised and acknowledged agent at Milwaukee aforesaid, for the said Grand Trunk railway steamers.

Third. That on or about the day and in the year aforesaid, the said steamer Lady Franklin was lying in the port of Milwaukee aforesaid, bound thence on a voyage to Sarnia, in the province of Canada; and at the special instance and request of the said H. Courtnay, agent as aforesaid—who was then acting for and in behalf of the said steamer Lady Franklin, and her master and owners—the said libellant, by his agent, Edward Sanderson, at Milwaukee aforesaid, caused to be delivered at Milwaukee aforesaid, to the said steamer, her master, agent, and servants, three hundred and forty barrels of flour, marked and branded "Fulton Mills," of great value, to wit, of the value of four thousand dollars, lawful money of the United States, to be taken and securely carried and conveyed from Milwaukee aforesaid, to the city of Portland aforesaid, and there at Portland aforesaid, to be safely and securely delivered to the said libellants; the dangers of navigation, fire, and collision only excepted; the said libellants paying to the agents and servants of said steamer, freight thereon at the rate of one dollar and ninety cents per barrel for each and every barrel of said flour, delivered as aforesaid, as ap-
8 pears by the bill of lading in that behalf made and executed.

Fourth. That on or about the eleventh day of November aforesaid, the said Sanderson, agent as aforesaid, made his draft at Milwaukee aforesaid, on the said libellants, for the value of the said three hundred and forty barrels of flour, and to it attached a certain bill of lading; a copy of it is hereto annexed, marked Exhibit "A," and to which reference is made in the third article of this libel, and the bill of lading and the draft as aforesaid, was presented to the said libellants immediately after the said flour was delivered to the said steamer, her servants and agent aforesaid, and the said draft was duly paid by the said libellants.

District Court, June term, A. D. 1865.

Stipulation.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Whereas a libel was filed in this court on the fifteenth day of June, A. D. 1865, by A. S. King, A. Butler, and C. Thurlow, against the proceeds of the sale of the steamer Lady Franklin, for the reasons and causes in the said libel mentioned, and praying that the same may be condemed to answer the prayer of the libellant; and the said libellant, and Sam'l T. Atwater, and Robert Rae, sureties, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or their sureties, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall pay all such costs as shall be awarded against by this court, or in case of appeal by the Appelate Court.

A. S. KING,
A. BUTLER,
And C. THURLOW.
5 By S. T. ATWATER.
SAM. T. ATWATER.
R. RAE.

Taken and acknowledged, this 15th day of June, A. D. 1865, before me.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Samuel T. Atwater, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

SAM. T. ATWATER.

Sworn this 15th day of June, A. D. 1865, before me.

R. RAE, *U. S. Com.*

[5-cents rev. stamp, cancelled.]

Endorsed: Filed June 15th, A. D. 1865. Wm. H. Bradley, clerk.

6 *Libel.—In admiralty.*

To the Hon. Thomas Drummond, judge of the United States District Court for the northern district of Illinois:

The libel of A. S. King, A. Butler, and C. Thurlow, of the city of Portland, in the State of Maine, traders in the said city of Portland,

under the firm, name, and style of King, Butler & Thurlow, against the proceeds of the sale of the steamer Lady Franklin, now in the registry of this honorable court, in a cause of contract, civil and maritime, allege as follows, to wit:

First. That the said steamer Lady Franklin is and was at the time when the said proceeds were paid into the registry of this honorable court, a vessel of more than twenty tons burthen, and at the time when the cause of action, hereinafter stated and set forth, arose, was enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States upon the lakes and navigable waters connecting said lakes.

Second. That on or about the ninth day of November, in the year of our Lord one thousand eight hundred and sixty-three, the said steamer, and divers other steamers and vessels, were advertised and known in the city of Milwaukee, in the State of Wisconsin, as the Grand Trunk railway steamers, and engaged and employed as
7 common carriers for hire of goods and chattels between ports and places in different States and Territories of the United States. And one H. Courtney was the advertised and acknowledged agent at Milwaukee aforesaid, for the said Grand Trunk railway steamers.

Third. That on or about the day and in the year aforesaid, the said steamer Lady Franklin was lying in the port of Milwaukee aforesaid, bound thence on a voyage to Sarnia, in the province of Canada; and at the special instance and request of the said H. Courtnay, agent as aforesaid—who was then acting for and in behalf of the said steamer Lady Franklin, and her master and owners—the said libellant, by his agent, Edward Sanderson, at Milwaukee aforesaid, caused to be delivered at Milwaukee aforesaid, to the said steamer, her master, agent, and servants, three hundred and forty barrels of flour, marked and branded "Fulton Mills," of great value, to wit, of the value of four thousand dollars, lawful money of the United States, to be taken and securely carried and conveyed from Milwaukee aforesaid, to the city of Portland aforesaid, and there at Portland aforesaid, to be safely and securely delivered to the said libellants; the dangers of navigation, fire, and collision only excepted; the said libellants paying to the agents and servants of said steamer, freight thereon at the rate of one dollar and ninety cents per barrel for each and every barrel of said flour, delivered as aforesaid, as ap-
8 pears by the bill of lading in that behalf made and executed.

Fourth. That on or about the eleventh day of November aforesaid, the said Sanderson, agent as aforesaid, made his draft at Milwaukee aforesaid, on the said libellants, for the value of the said three hundred and forty barrels of flour, and to it attached a certain bill of lading; a copy of it is hereto annexed, marked Exhibit "A," and to which reference is made in the third article of this libel, and the bill of lading and the draft as aforesaid, was presented to the said libellants immediately after the said flour was delivered to the said steamer, her servants and agent aforesaid, and the said draft was duly paid by the said libellants.

Fifth. That afterwards, to wit, on or about the fourteenth day of December, in the year aforesaid, the said steamer, by her servants and agents, in the city of Portland aforesaid, delivered to the said libellants fifty barrels of the said three hundred and forty barrels of flour.

Sixth. That although the said steamer, by her agent at Milwaukee aforesaid, had promised and undertaken, safely, securely, and in good order and condition, to deliver the whole and all of the said three hundred and forty barrels of flour at the city of Port-
9 land aforesaid, to the said libellants, as appears by the bill of lading in that behalf made and executed, yet the said steamer, her servants and agents, not regarding their duty in that respect, nor their said promise and undertaking, but contriving to injure the said libellants in that respect, did not nor would take care of, carry, and safely convey, in good order and condition, the residue of said barrels of flour, to wit, two hundred and ninety barrels of said flour, and deliver the same at the city of Portland aforesaid, so delivered to the servants and agents of the said steamer, although no danger of navigation, fire, or collision did prevent them from so doing; but, on the contrary therof, the said agent and servants of said steamer so carelessly and negligently conducted themselves with respect to the said residue of said barrels of flour, that by and through their mere careless negligence and improper conduct, the residue of said barrels of flour became and was wholly lost to the said libellants, to the damage of the said libellants in the sum of four thousand dollars.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court, wherfore said libellants pray that the said proceeds now in the registry of this honorable court may be condemned in due form of law, according to the course of this honorable court in cases of admiralty
10 and maritime jurisdiction; and that all persons claiming any right, title, interest, or claim in and to the said proceeds may be cited to appear before this honorable court, and true answer make to all and singular the matters aforesaid, and that this honorable court would be pleased to order that the damages aforesaid be paid out of the proceeds aforesaid, and costs thereto, and that said libellants may have such other and further relief as they may be entitled to receive in the premises.

SAM. T. ATWATER, *Agent.*
For BUTLER, KING & THURLOW.

Subscribed and sworn before me this 14th day of June, A. D. 1865.

11 UNITED STATES OF AMERICA, *Northern District of Ill., ss:*

Sam. T. Atwater, of the city of Chicago, being duly sworn, deposes and says, he has read the foregoing libel and knows the contents hereof, and the same is true to the best of his knowledge, information, and belief; that he is attorney in fact and agent for the said

Butler, King & Thurlow; that they reside at Portland, in the State of Maine, and are not within the jurisdiction of this honorable court.

SAM. T. ATWATER.

Subscribed and sworn this 14th day of June, A. D. 1865, before me.

R. RAE, *U. S. Com'r.*

[5-cent. rev. stamp, cancelled.]

GRAND TRUNK LINE STEAMERS,
Milwaukee, November 9th, 1863.

Shipped in good order and condition by H. Courtenay, as agent and forwarder, for and on account of and at the risk of whom it may concern, on board the steamer Lady Franklin, whereof Ira Hinkley is master, now in the port of Milwaukee and bound for port Sarnia, the following articles as here marked and described, to be delivered in like good order and condition as addressed on the margin,
12 or to his or their assigns or consignees of, upon paying the freight and charges so noted below; the dangers of navigation, fire, and collision excepted.

In witness whereof, the master of said vessel hath affirmed to two bills of lading, all of this tenor and date; one of which being accomplished, the other to stand void.

KING, BUTLER & THURLOW.

340 barrels flour, "Fulton" freight through to Portland, per barrel 1 90.

H. COURTENAY,
Ag't G. T. R. Way Steamers.

Endorsed: Filed this 15th day of June, A. D. 1865. Wm. H. Bradley, clerk.

13 On this day, to wit, the 23rd day of June, A. D. 1866, came Albert E. Goodrich, by Messrs. Goodwin, Larned and Goodwin, his proctors, and filed in said clerk's office his stipulation for costs, his claim and his answer in said entitled cause, which said stipulation claim and answer are respectively in the words and figures following, to wit:

District Court, May term, A. D. 1865.

Claimant stipulation.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Whereas a libel was filed in this court on the fifteenth day of June, A. D. 1865, by A. S. King, A. Butler, and E. Thurlow, against the proceeds of the sale of the propeller Lady Franklin, her boats, tackle, apparel, and furniture, for the reasons and causes in the said libel

mentioned, and whereas, a claim has been filed in the said cause by Albert E. Goodrich, and the said Albert E. Goodrich and surety, the parties hereto hereby consulting and agreeing that in case of default, or contumacy on the part of the claimant or his surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are firmly bound in the sum of two hundred and fifty dollars,
14 conditioned that the claimant above named shall pay all such costs as shall be awarded against by this court, or in case of appeal, by the Appellate Court.

ALBERT E. GOODRICH.
JASPER E. GOODRICH.

Taken and acknowledged this 23rd day of June, A. D. 1865, before me.

WM. H. BRADLEY, *Clk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Jasper E. Goodrich, party to the above stipulation, being duly sworn, deposes and says, that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars, over and above all his debts and liabilities.

JASPER E. GOODRICH.

Sworn this 23rd day of June, A. D. 1865, before me.
WM. H. BRADLEY, *Clk.*

Endorsed: Filed June 23rd, A. D. 1865. Wm. H. Bradley, clerk

15 *Claim.*

To the Honorable Thomas Drummond, judge of the District Court of the United States for the northern district of Illinois:

Albert E. Goodrich, of Chicago, in the county of Cook and State of Illinois, owner of the propeller Lady Franklin, her tackle, apparel and furniture, intervening for his interest in the said propeller Lady Franklin, her tackle, apparel and furniture, appears before this honorable court and claims the said propeller, her tackle, apparel and furniture, and states that he is the true and bona fide owner thereof.

And thereupon the said claimant prays that this honorable court will be pleased to decree a restitution of the same to him, or the proceeds of the sale of said propeller, and otherwise right and justice to administer in the premises.

ALBERT E. GOODRICH.

GOODWIN, LARNED & GOODWIN,
Proctors for Libellants.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Albert E. Goodrich, of Chicago, in said district, being duly sworn, deposes and says that the facts stated above are true, and
16 that he is the true and bona fide owner of the said propeller Lady Franklin.

ALBERT E. GOODRICH.

Subscribed and sworn to this 23rd day of June, A. D. 1865, before me.

WM. H. BRADLEY, *Cl'k.*

Endorsed: Filed June 23rd, A. D. 1865. Wm. H. Bradley, cl'k.

17 *Answer.*

To the Honorable Thomas Drummond, judge of the District Court of the United States for the northern district of Illinois:

The answer of Albert E. Goodrich, claimant and owner of the proceeds of the sale of the propeller Lady Franklin, her engine, anchors, tackle, apparel and furniture, intervening for his interest in the said proceeds to the libel intervening of A. S. King, A. Butler & C. Thurlow, partners under the name and style of King, Butler & Thurlow, libellants, answer and allege as follows:

First. That this respondent admits, as in the first article of said libel propounded, that the said propeller Lady Franklin was a vessel of more than twenty tons burthen, enrolled and licensed for the coasting trade on the lakes pursuant to law. And this respondent further says in relation thereto that the said propeller Lady Franklin was a vessel of about three hundred and forty-one tons burthen, built at Chicago, Illinois, in the year 1861; that she was pur-
18 chased by this respondent of J. T. & E. M. Edwards, on or about the first day of April, 1863, duly enrolled and licensed in the name of this respondent, as owner in fact at the said port of Chicago, in the State of Illinois, and on the twenty-sixth day of April, 1864, the said license was renewed at the said port of Chicago, in the name of this respondent as record owner, reference being had to the said enrollment and license as aforesaid.

Second. That as to the matters in the said second and third articles of said libel contained, this respondent denies the same, except as hereinafter contained; and this respondent says on his information and belief in relation thereto, that he denies that the three hundred and forty barrels of flour, or any part thereof in the third article of the said libel set forth and mentioned, was ever shipped or received on board the said propeller Lady Franklin, at the port of Milwaukee, as in said libel stated, to be carryed to and delivered to the said libellants at Portland, Maine, or that the same was ever delivered by the said Edward Sanderson to said H. Courteney, as agent of said Lady Franklin, to be shipped or put on board of the said Lady Franklin; and this respondent further says in relation thereto and to the remaining allegations in said second and third articles of said libel, that on the

19 day of the date of the said paper writing purporting to be a bill of lading in said libel referred to, to wit, on the ninth day of November, in the year one thousand eight hundred and sixty-three, and for some time previous thereto, the said propeller Lady Franklin was in the possession of Joseph T. Kirkland, as owner, and was sailed, navigated, and managed by him, or by a master appointed and hired by him, as hereinafter more particularly set forth, this respondent having no interest in the control, navigation, or freight of the said Lady Franklin; that the said propeller Lady Franklin was, at that time, one of several similar vessels that by arrangement between the owners respectively and the Grand Trunk Railway Company were running between the port of Milwaukee and Port Sarnia, in Canada West, in connection with the said Grand Trunk Railway Company, for the transportation of freight and passengers, each one being interested in, and responsible for, its own land and passengers respectively only, and not in or for any other; that this respondent was, at the same time, the owner and keeper of a warehouse at Milwaukee aforesaid, as a warehouseman, for the receipt, deposit, and safe-keeping and forwarding of goods, wares, merchandise, and produce, by water, upon the lakes, to various ports and places, and entirely unconnected, in interest, with any of said vessels in
20 said Grand Trunk and Port Sarnia line; that said Edward Sanderson, in said libel mentioned, was and acted as agent at Milwaukee, for the purchase of produce for persons or houses at the east, to be shipped by said Grand Trunk and Port Sarnia line of propellers to the respective owners, and such produce, in lots as the same were purchased, from time to time, were by said Edward Sanderson deposited in the said warehouse, (in which H. Courtenay was this respondent's agent,) with and under the arrangement, instruction, and understanding that the same were to be shipped by the said warehouseman by the earliest propeller in said line that could take them to their ports or places of destination respectively; that the said three hundred and forty barrels of flour, belonging to said libellants, in said libel mentioned, were deposited and delivered by said Edward Sanderson unto said warehouse, of which the said H. Courtenay was then agent, some days before the date of the said paper writing, purporting to be a bill of lading, and on or about the twentieth day of October, 1863, to be shipped by him as such agent, in conformity with the instructions, arrangement, and [and] understanding above set forth as aforesaid; and that of the said three hundred and forty barrels of flour, fifty barrels thereof had been, at the date of the said paper writing, purporting to be a bill of lading, to wit, on the first day of November, 1863, actually shipped by the
21 said H. Courtenay, agent as aforesaid, and delivered on board of and by a previously sailing propeller, the Antelope, of the said Grand Trunk and Port Sarnia line, to be carried and delivered to the said libellants at Portland, Maine, which is the same fifty barrels of flour referred to in said libel as received by the libellants, part of the said three hundred and forty barrels, and received, shipped by the Antelope and not by the Lady Franklin; and that if the said

three hundred and forty barrels of flour aforesaid, the remainder thereof, to wit, two hundred and ninety barrels of flour, had been, at the date of the said paper writing, purporting to be a bill of lading, to wit, on or about the seventh day of November, 1863, actually shipped by the said H. Courtenay, agent, and delivered on board a previously sailing vessel, the Water Witch, of the said Grand Trunk and Port Sarnia, to be carried to, and delivered to, the said libellants at Portland, Maine; that on the said ninth day of November the said H. Courtenay, agent, and being and acting also as agent for the different steamers respectively running in said line, being called on for a memorandum or bill of lading for the flour then on hand, delivered at the said warehouse by the said Edward Sanderson, as such agent as aforesaid, and intended to be then and there shipped by the Lady Franklin, the then next sailing propeller, he, the said H. Courtenay, untruly, and by accident and mistake, executed and gave
22 to said Edward Sanderson, the agent of the said libellants, the said paper writing, purporting to be a bill of lading for three hundred and forty barrels of flour, as shipped on board of the Lady Franklin, then expecting to leave the said port of Milwaukee the next day, being the same paper writing to the said libel annexed as Exhibit A, for three hundred and forty barrels of flour received by the Lady Franklin to be carried and delivered to the libellants at Portland, Maine, whereas, in truth and in fact, said three hundred and forty barrels of flour never were delivered to or received on board the said Lady Franklin, and were not then, nor any part thereof, in said warehouse, nor had the said three hundred and fifty barrels of flour, or any part thereof, ever been delivered to or received by the said H. Courtenay, as agent of the said propeller Lady Franklin, or to or by any other officer or agent of said Lady Franklin, but on the contrary thereof, this respondent distinctly alleges, on his information and belief, as aforesaid, that fifty barrels of the said three hundred and forty barrels of said flour had been, on or about the first day of November, 1863, previously shipped on board the propeller Antelope, consigned to the said libellants, and afterwards received by them confessedly on said shipment by the Antelope, and that the remaining two hundred and ninety barrels of the said three
23 hundred and forty barrels of flour had been, on or about the seventh day of November, 1863, previously shipped on board of the propeller Water Witch, to the libellants as aforesaid, as the said libellants, at the time of the filing said libel, well knew; and this respondent further says, that the actual bill of lading of the said propeller Lady Franklin, on her said trip, made out and bearing date the next day, (and the day of her sailing,) contains but one shipment of flour at the said libellants at said time, made on the said steamer Lady Franklin, which said shipment was one of two hundred and forty barrels of flour, and for which a bill of lading, dated Nov. 10, 1864, was given to said libellants by the said Courtenay, and which said two hundred and forty barrels of flour, in the said last-mentioned bill of lading specified was duly delivered to the said libellants, and upon information and belief, this respondent states that there was

no flour of or for the said libellants received on board the said Lady Franklin at said time, except the said shipment of two hundred and forty barrels, which was safely delivered to the said consignees as aforesaid.

And this respondent, upon information and belief, further states that the said libellants caused a policy of insurance on said flour, mentioned in the said libel, to be taken out in the Buffalo Mutual
24 Insurance Company, or in some other insurance company or companies; and that upon the loss of the said steamer Water Witch, the said vessel on which the said flour was actually shipped, as aforesaid, the said libellants, as the owners of the said two hundred and ninety barrels, so shipped on said Water Witch, as aforesaid, made a claim upon said insurance company or companies for the insurance money upon the said flour, and received from the said insurance company or companies the amount of the said loss, upon an adjustment of the same, made and agreed to by and between the said libellants and the said insurance company or companies; and this respondent states, upon information and belief, that the sum so paid by said insurance company or companies was paid to the said libellants for, or on account of, the identical flour mentioned in the said bill of lading in this libel set forth, and as being, in fact and truth, the same identical flour which was shipped on board the said steamer Water Witch, and by mistake untruly described in said bill of lading as shipped on the said Lady Franklin, and the said sum was received by the said libellants in full payment and satisfaction for the loss of the same identical flour mentioned in said libel.

Third. That this respondent is ignorant as to the matters
25 by said libellants set forth and propounded in the fourth article of said libel.

Fourth. This respondent says that the fifth article of said libel is untrue, as this respondent is informed and believes.

Fifth. That this respondent is informed and believes, in regard to the matter propounded and set forth in the sixth article of said libel, that the said fifty barrels of flour were shipped to the said libellants by the propeller Antelope, and so received by said libellants, and that the remaining two hundred and ninety barrels of said flour never were, in fact, delivered to the said libellants, but that the same having, as aforesaid, been shipped on board the Water Witch and not on the Lady Franklin, was not delivered because the said propeller, Water Witch, was on the same voyage, and on or about the day of November, 1863 last, and sunk by inevitable accident from the dangers of navigation at open sea on Lake Huron, and her cargo, including the said two hundred and ninety barrels of flour, became a total loss, a loss with which the said propeller, Lady Franklin, her agents, officers, and servants had nothing to do; and this respondent says that the owners of the Lady Franklin justly refuse to pay any portion of said damage.

26 Sixth. This respondent further answering, says: that this respondent being the owner of the said propeller, Lady Frank-

lin, enrolled and licensed at the port of Chicago aforesaid, on or about the tenth day of July, 1863, sold the said propeller by a written contract of sale to Joseph F. Kirkland and James H. Mead, of Sheboygan, Sheboygan county, in the State of Wisconsin, for the sum of twenty-eight thousand dollars; reference being had to the said contract of sale ready to be produced to this honorable court, and a copy whereof is hereto annexed, making part of this respondent's answer, marked Schedule A, for a full statement of the terms and conditions of the said sale; that this respondent, on the execution of the said contract of sale, received from the said Joseph F. Kirkland the sum of ten thousand dollars, and forthwith delivered the possession of the said propeller and appurtenances to the said Joseph F. Kirkland, as in said contract provided, on the said tenth day of July, 1863; that the said Joseph F. Kirkland was the acting man in the said transaction and did the business personally, took the control and possession of the said vessel as the owner in fact, for himself and the said James H. Mead, representing the German Bank at Sheboygan, who was named as a vendee in said contract but did not sign the same; and

27 this respondent states that the said James H. Mead refused to sign the said contract or to give the notes therein provided and repudiated the same, and that in consequence of such refusal no notes were given to or received by this respondent for the said balance of purchase money for said vessel; that the said Joseph F. Kirkland used and ran the said vessel on his own account during the residue of the year, 1863, and until October, 1864, appointing his own master and in all respects assuming the exclusive control of said vessel.

This respondent further says that no part of the balance of the said consideration for the sale of the said vessel was ever paid by the said Joseph F. Kirkland to this respondent, and that on or soon after the sixth day of October, 1864, this respondent received from the said Joseph F. Kirkland a letter, a copy of which is hereto annexed marked Schedule B, making part of this respondent's answer, and on or soon after the tenth day of October, 1864, this respondent received a further letter from the said Joseph F. Kirkland, a copy of which is hereto annexed marked Schedule C, making a part of this respondent's answer; that in pursuance of said letters the said propeller, Lady Franklin, was about the middle of October, 1864, redelivered to this respondent for non-payment of the said balance due on the contract price thereof, and was taken possession of by the respondent and was

28 in his custody and possession as owner, at the city of Chicago, at the time of the filing the libel in this court, by virtue of which she was attached.

Seventh. This respondent denies that the said damages in said libel claimed were or are a lien upon the said propeller, Lady Franklin, in the hands of this respondent repossessing her as aforesaid, in default of payment of his claim for the unpaid purchase money of the said vessel or otherwise, or upon the proceeds of her sale in court.

Wherefore this respondent prays restitution to him of the said

vessel or the proceeds of the sale thereof in court, free and discharged from said alleged lien, and that his costs and expenses may be decreed to him, &c.

A. E. GOODRICH.

GOODWIN, LARNED & GOODWIN,
Proctors for Respondent.

29 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Albert E. Goodrich, of Chicago, in said district, being duly sworn, deposes and says that the facts stated in the above answer are true, as this deponent is informed and believes.

ALBERT E. GOODRICH.

Subscribed and sworn to this 30th day of June, A. D 1865, before me.

WM. H. BRADLEY, *Cl'k.*

30 *Schedule A.*

This agreement made this tenth day of July, one thousand eight hundred and sixty-three, between Albert E. Goodrich, of Chicago, Cook county, State of Illinois, of the first part, and Joseph F. Kirkland and James H. Mead, on behalf of the German Bank, Sheboygan, Sheboygan co., State of Wisconsin, of the second part, witnesseth, that the said party of the first part, in consideration of the payment hereinafter mentioned to be made by the party of the second part, has agreed and does hereby agree to sell and convey to the party of the second part the good propeller, Lady Franklin, together with all and singular, her anchors, chains, cables, rigging, tackle, apparel, and furniture of every name, kind, and description whatsoever, according to her enrollment, No. 32, dated Chicago, March 28th, 1862; built at Chicago, Illinois, in the year 1861; that she has one deck, one mast, and that her length is one hundred and thirty-nine and $8\frac{1}{2}$ feet, her breadth twenty-five and $6\frac{1}{2}$ feet, her depth ten and $2\frac{1}{2}$ feet, and that she measures three hundred and forty-one tons sixteen ninety-fifths; that she is a propeller, has a round stern and a plain head, for the sum of twenty-eight thousand dollars, ($28,000,) payable as follows: ten thousand dollars ($10,000) at the sealing and delivery of this agreement, the receipt whereof is hereby acknowledged, and the remainder to be paid as follows: eigh-
31 teen thousand ($18,000) during the next ensuing eighteen months, at the rate of one thousand dollars ($1,000) on the tenth day of each month, commencing August the 10th, 1863, with interest at the rate of seven per cent. per annum, according to the tenor and effect of eighteen promissory notes, all dated July 18th, 1863, and payable at the office of the Merchants' Saving, Loan, and Trust Co., in the city of Chicago, with interest at rate of seven per cent. per annum.

Now the said party of the first part dees hereby agree to sell and

convey to the said part of the second part by a good and sufficient bill of sale the above-described propeller upon the full performance by the party of the second part of the following conditions, but not otherwise; that is to say—

1st. That the party of the second part shall pay each and every of the said promissory notes at the time they severally became due and payable, according to the tenor and effect thereof, and that if default shall be made in the payment of either of said notes at maturity, the said party of the first part may at his option at any time after twenty (20) days from the happening of said default, declare a forfeiture of the rights of the party of the second part under this agreement, either by notice to be given to the party of the second part, or to any person who may be in possession of said propeller,
32 or by written notice to be deposited in the post office at Chicago, directed to the said party of the second part at Sheboygan co., State of Wisconsin, and from the time of giving or mailing such notice, all the rights of the part of the second part under this agreement, either at law or equity, shall wholly and forever cease and determine, and the said propeller, together with all and singular her anchors, chains, cables, rigging, tackle, apparel and furniture of every name, kind and description whatever, shall revert to the party of the first part the same as if this agreement had not been made, and the party of the first part wholly released and discharged from all liability to make the conveyance aforesaid. The party of the first part shall not be bound to refund any of the money which may have been paid on this agreement, or upon said notes, but shall retain as sent for the said propeller and not as a penalty.

2nd. The parties of the second part shall keep the said propeller fully insured for the benefit of the party of the first part for the am't due and unpaid, say twenty thousand dollars, during the year 1863, and twenty thousand dollars during the year of 1864.

3rd. Possession of said propeller to be given to said Joseph F. Kirkland and James H. Mead, the 10th day of July, 1863.

J. F. KIRKLAND.
A. E. GOODRICH.

33 *Schedule B.*

GREEN BAY, *Oct. 6th*, 1864.

A. E. Goodrich, Esq.:

DR. SIR: Mr. Brodie said he would give the "Lady Franklin" full cargo m'ch'd's' on way up. The failure of business in this region on a'c of dearth of crops, the breakdown of the "Franklin" in the spring, the caulking and dry dock bill, the burning of the Toronto "elevator," the running on the rocks in St. Lawrence river, and consequent expenses were too many contingencies for us to navigate under, and I see no way for me but to return the boat, bid "good bye" to the $10,000, and make some business strike that will enable me to make things right with you at the earliest practicable moment.

We had to make those "elevator" hatches and build bulkheads

in order to meet the requirement of G. T. R. R. in shipping their grain. I explained to you fully why she was not "laid up," as per my letter of instructions. The operation has resulted as you predicted, (though from different reasons to some extent,) and I would not permit you to suffer thereby, even temporarily, could it be avoided. I thought to "work out," meet your wishes and save the $10,000, but all the contingencies have been adverse, and in this mat-
34 ter we are swamped. It was an error, the sending the boat to Lake Ontario.

The U. T. Co. have lost the Ogdensburg; possibly they might take the Franklin, as there are heavy crops of corn and oats to go forward next season from every section except northern Wisconsin, or perhaps the whole of Wisconsin.

Truly yours, &c.,

J. F. KIRKLAND.

Schedule C.

GREEN BAY, *Oct. 10th*, 1864.

A. E. Goodrich, Esq.:

DR. SIR: I told Capt. Crable to deliver the "Franklin" to you; I don't know of anything else I could do. Kingsbury had to go to Lake Superior on the Union. I have got to go to Sheboygan; therefore I cannot come to Chicago just now. John B. King is dead; propellers won't trouble him any more.

Truly yours, &c.,

J. F. KIRKLAND.

Endorsed: Filed June 30th, 1865. Wm. H. Bradley, cl'k.

35 On this day, to wit, the 5th day of October, in the adjourned October term, A. D. 1866, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

A. S. KING, A. BUTLER, and C. THURLOW, } Libel.
vs.
PROCEEDS OF PROPELLER LADY FRANKLIN. }

Now come the parties by their proctors, and by agreement this cause is set down for hearing on the libel the answer thereto, and the proofs filed, and after hearing the same, together with the arguments of the advocates of the respected parties, the court not being now sufficiently advised in the premises, takes time to consider.

On this day, to wit, the 10th day of January, A. D. 1867, in the December term, A. D. 1866, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

A. S. KING, A. BUTLER, and C. THURLOW, } Admiralty.
vs.
PROCEEDS OF PROPELLER LADY FRANKLIN. }

36 The court having considered, and being now fully advised upon the matter heretofore submitted, herein finds against the

libellants, and dismisses the libel at the costs of the libellants. It is therefore considered by the court that the libel be dismissed at the cost of the libellants, and that the claimant have and receive of the libellants his costs by him about his defense in this behalf expended, to be taxed, and that he have execution therefor against the libelants and their stipulators for costs herein.

And the libellants pray an appeal to the Circuit Court.

On this day, to wit, the 12th day or January, A. D. 1867, in the December term, A. D. 1866, of said court, in the record of the proceedings thereof in the following causes is the following entry, to wit:

A. L. KING, A. BUTLER, and C. THURLOW,
vs.
PROCEEDS OF PROPELLER LADY FRANKLIN. } Admiralty.

WILLIAM L. SOUTHARD & NATHAN P. WOODBURY
vs.
PROCEEDS OF PROPELLER LADY Franklin. } Admiralty.

37 ALIDA M. LITTLEJOHN. FRANCES B. Dane, and Theodore W. Wells,
vs.
PROCEEDS OF PROPELLER LADY FRANKLIN. } Admiralty.

Now comes Albert E. Goodrich, the claimant and respondent in each of the above-entitled cases, who files his bond or stipulation herein, under and by virtue of a stipulation filed by the parties by their respective proctors in each of said entitled three cases, and thereupon on motion of Goodwin & Larned, proctors for said respondent, leave is granted them by the court to withdraw from court the special deposit of fifteen thousand dollars in bonds of the United States deposited as the proceeds of the sale of said propeller.

On the hearing of said cause the libellants read in evidence the following testimony, to wit:

Libelants' testimony.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Be it remembered that on this 23rd day of June, A. D. 1865, I, Azariah T. Galt, a notary public for the city of Chicago, in said district, authorized by an act of Congress to take and certify oaths and affirmations, did cause Edward Sanderson personally to appear
38 before me at the office of Robt. Rae, esq., in said district, to testify on the part of the libelants in two certain cases depending in the District Court of the United States for the northern district of Illinois, at Chicago, wherein A. S. King, A. Butler, and A. Thurlow are libelants in one case, and William Southard and

Nathan P. Woodbury are libelants in the other case, and the proceeds of propeller "Lady Franklin," her apparel, tackle, &c., are respondents.

Deposition of Edward Sanderson.

And the said Edwin Sanderson was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the causes aforesaid; I carefully examined the said Edwin Sanderson, and he did thereupon depose and say as follows:

1st. int. What is your name, age, occupation, and place of residence?

Ans. My name is Edward Sanderson; am of lawful age; I am a flouring miller in Milwaukee; I live in Milwaukee.

2nd int. How long have you resided in Milwaukee?

Ans. Most of the time for eighteen years.

3rd int. Do you know the libelants and the propeller "Lady Franklin?"

39 Ans. I do.

4th int. Do you know who was the agent of the propeller Lady Franklin at Milwaukee, in 1863? If so, state.

Ans. I do. H. Cortenay was the agent.

5th int. State whether in November, 1863, you had any conversation with Mr. Courtenay, or any one else representing the steamer "Lady Franklin," in reference to the shipment of flour; and if so, when did the conversation take place, with whom did it take place, and who was concerned in the flour.

Ans. I had such a conversation with Mr. Courtenay. It was several days prior to the shipment of the flour. I think a week previous. The libelants, and Southard & Woodbury were concerned in the flour. Southard & Woodbury are libelants in the other case.

6th int. State what was said by you and Mr. Courtenay in reference to said shipment.

(Question objected to by Mr. Larned as calling for the statements of a third party.)

Ans. Mr. Courtenay said he wished to load the Lady Franklin at Milwaukee, and solicited consignments of flour by her. I agreed to give him, I think, about one thousand barrels. I sent the flour down to his warehouse and got bills of lading for the same.

40 7th int. Are these the bills of lading marked Exhibit "A and "B."

Ans. These are the bills of lading of the consignment to the libelants. There are other bills of lading of consignment to Southard & Woodbury of like tenor and date, for one hundred barrels.

8th int. State whose warehouse this flour was delivered to, and where the wharehouse was situated, and what connection the "Lady Franklin" had with this warehouse.

Ans. It was the warehouse which Mr. Courtenay had charge of, and the one at which this line of boats received their freight. It was situated on the wharf, a regular warehouse.

9th int. Had all the flour mentioned in these bills of lading been delivered by you in this warehouse; and if so, for what purpose, and upon what boat was it delivered by you to go on?

Ans. They were all delivered by me in this warehouse for shipment to the parties and place mentioned in the bills of lading, and shipped to go on the "Lady Franklin."

10th int. Was there any understanding between you and Mr. Courtenay, or any one else, that this flour was to go by the
41 first boat that arrived?

Ans. There was not.

11th int. Was there any express agreement by which boat it was to go; and if so, what boat was it to go by?

Ans. The contract was made to be shipped on board the "Lady Franklin."

12th int. Had you any knowledge or notice at the time you received the bills of lading that it had not gone on the Lady Franklin, or that it had gone on any other boat?

Ans. I had not.

13th int. Had you any notice or knowledge that it had gone by any other boat until after the flour was lost?

Ans. I had not.

14th int. What did you do with these bills of lading marked Exhibit "A" and "B" and those of Southard & Woodbury?

Ans. I forwarded them by mail to the respective consignees.

15th int. Did you, before or after you had forwarded the bills of lading, draw upon the parties for the value of the flour mentioned in the bills of lading?

Ans. I drew upon them after sending the bills of lading and drafts were paid.

42 16th int. Was this before or after the news came of the loss of the flour?

Ans. Before.

17th int. State at the time of the loss who were the owners of the flour.

Ans. I supposed the consignees were the owners, because they bought it of me and paid me for it.

18th int. Do you know the value of the flour per barrel that was lost?

Ans. The Arcade flour was worth $6 60 and the Fulton mills $7 35 at Milwaukee.

19th int. Which flour was lost?

Ans. I can't say whether it was the "Arcade" or "Fulton" flour. I now know that it was the Fulton flour that was lost; it was worth $6 60 per barrel. I know this from an affidavit I made before Hibbard, a notary public at Milwaukee, at the time, now shown me. If I were home I could tell the exact value of the flour. The value I put in the affidavit was put on a average. (The witness now says after conversation with proctor for libelants, in presence of all the parties, that he cannot say with any certainty what flour was lost or the value of it.)

20th int. At the time you had this conversation with Mr.
43 Courtenay, and at the time you delivered the flour and received the bills of lading, and at the time you sent the bills of lading to the consignee and drew against them, was there anything said by any one connected with the Lady Franklin, or by Mr. Courtenay, or any one in his office, about the flour or any part of it going on the "Water Witch?"

Ans. There was no conversation on the subject, and I know nothing about it.

21st int. Do you know whether any of the flour went by the Lady Franklin?

Ans. I don't know, of my own knowledge. I heard from the consignees that part of the shipment had arrived at Portland.

Cross-examination.

By Mr. Larned:

1st x-int. How long had you been purchasing flour for these parties?

Ans. I did not purchase this for them; I made it myself and sold it to them. I had been selling these same parties for two years.

2nd x-int. What was the course of business with them?

Ans. They would either order flour by telegraph, or by letter, or in person, and I would ship it to them.

3rd x-int. What was the general direction in regard to shipments?

Ans. Ordinarily I would send the flour down to this ware-
44 house, and they would ship it by the first boat that came along.

4th x-int. Was this your understanding generally with Mr. Courtenay?

Ans. Yes, sir.

5th x-int. You speak of a line of boats which Mr. Courtenay was agent for; what line was it?

Ans. The line known as the "Grand Trunk line." The "Water Witch" and the "Antelope," and I think the Hunter, Antelope, and others, belong to the same line.

6th x-int. Was Courtenay acting as much for one boat as another?

Ans. Yes, sir.

7th x-int. When you say he was agent for Lady Franklin, you do not mean that he was the special agent of that boat, but of the line which she belonged?

Ans. He said he was the agent of the Lady "Franklin." I don't know that his agency for this boat was different from the others. He also acted as agent for the other boats.

8th x-int. How long before the date of these bills of lading was the conversation to which you refer?

Ans. I think about a week.

9th x-int. At the time of that conversation was the Lady
45 Franklin expected soon to arrive at Milwaukee on her way to Port Sarnia?

Ans. She was.

10th x-int. Was it in view of that expected arrival that Courtenay was soliciting freight?

Ans. That was what he said to me.

11th x-int. How long after this conversation between you and Courtenay bofore the flour was sent by you to the warehouse to be shipped to these parties?

Ans. I commenced sending it down at once after.

12th x-int. Was there anything occurred between you and Courtenay, and if so what, which advised him that he was to vary in this lot of flour from the usual course which you say had been pursued with regard to previous shipments, in forwarding it by the first vessel of the line arriving after the receipt of flour?

Ans. This flour was engaged to go on the "Lady Franklin," and there was no conversation further in regard to the matter. The line had been broken up and a good many of the boats had been hauled off, and there had been difficulty in shipping by this line; and he said if he could get a load of flour for the Lady Franklin he would load her.

46 13th x-int. This conversation had reference, had it not, to Lady Franklin being the next vessel of the line expected to leave Milwaukee, and not to any special difference between the "Lady Franklin" and "Water Witch" in reference to such shipments?

Ans. This conversation had reference to the "Lady Franklin" being the next vessel expected to leave Milwaukee. There was nothing said about the "Water Witch."

14th x-int. Was Courtenay advised by you of there being any choice on your part between the "Water Witch" and the "Lady Franklin" in respect to the shipment of the said goods, or that you had any objection to the "Water Witch," or any preference of the one over the other?

Ans. There was nothing said about the "Water Witch" at any time.

15th x-int. What, if anything, had been said or done which should induce Courtenay to vary from what you say had been the usual course and understanding in reference to the shipping of flour sent by you to his warehouse on the first steamer of the line after the receipt of the flour, in respect to this lot of flour in question?

Ans. On account of the line being broken up, and the uncertainty of shipping property, he designated the Lady Franklin.

47 16th x-int. Did Courtenay have any reason to know or believe from anything which had been previously said between you, that you would wish him to detain the property in his warehouse to await the "Lady Franklin's" arrival, if in the mean time the Water Witch or any other suitable or safe vessel of said line left Milwaukee for port Sarnia?

Ans. There was nothing said about it except it was to go by Lady Franklin.

17th x-int. Did you tell him to hold it for the "Lady Franklin"?

Ans. I engaged the freight by the Lady Franklin and nothing said about anything else.

18th x-int. Did you tell him specially to hold it for the Lady Franklin?

(Question objected to by libellants because the witness has already sworn that he did ship it to go specially by the Lady Franklin.)

Ans. No.

19th x-int. Had he, to your knowledge, any reason to think from anything that passed between you that you would prefer him to detain the property specially for the Lady Franklin, if another safe or suitable steamer of the same line should leave for port Sarnia before the arrival of the Lady Franklin?

Ans. I don't know that he had.

48 20th x-int. At the time the bills of lading were signed where were you and where were they delivered to you?

Ans. I was in his office and they were delivered to me there.

21st x-int. Were they delivered on the day they purport to bear date?

Ans. I think they were.

22nd x-int. At the time you received the bills was any examination made to see whether the flour mentioned in them was present in the warehouse at the time?

Ans. I don't know that there was.

23rd x-int. You say it could not have been because it was all gone. How do you know it was all gone?

Ans. I supposed it was all gone because part of it was on the "Water Witch" and a part of it on the "Lady Franklin."

24th x-int. Had the "Lady Franklin" left Milwaukee for Port Sarnia at the time the bills of lading were handed to——

Ans. I do not know.

25th x-int. You say you supposed some of this flour was shipped on the Lady Franklin; please state what reason you have for this supposition.

Ans. I had advice from Portland that some was received and Courtenay told me that some was lost.

49 Do you not know, or have you not heard that part of the flour was received by the Antelope and not by the "Lady Franklin"?

Ans. I was told after the loss that fifty barrels were received by some vessel before the "Lady Franklin."

27th x-int. Was fifty barrels all that was received of the three hundred and forty barrels?

Ans. I don't know.

28th x-int. State whether you know or have been informed that the two hundred and ninety barrels comprised in the bill of lading mentioned in the libel, over and above the fifty barrels received, had been shipped on the Water Witch on the seventh of November.

Ans. I was told after the loss that it had been shipped on the Water Witch.

29th x-int. Have you any actual knowledge that any part of the flour mentioned in the bill of lading to Butler, King and Thurlow, marked Exhibit "B," was actually on board the Lady Franklin?

Ans. The agent told me there was. I know nothing further than that I saw none of it on board of the vessel.

30th x-int. When did Courtenay tell you there was any of
50 that flour on the Lady Franklin?

Ans. He came to my office the morning after he heard of the loss of the Water Witch to see my bills of lading, and he brought an account of what was shipped on the Lady Franklin and the "Water Witch." He told me that some of this identical flour was on board of the "Lady Franklin."

31st x-int. If fifty barrels of this shipment were in fact shipped by the Antelope or by some other vessel, and two hundred and ninety by the "Water Witch," as subsequently appeared, then he was mistaken in such statement, was he not, and there was not in fact any on board of the Lady Franklin?

Ans. I do not say that Courtenay stated to me that any of the flour mentioned in Exhibit "A" was on the Lady Franklin, but the flour in Exhibit "B" was on the "Lady Franklin."

32nd x-int. Was there in fact, to your knowledge or information, any of the flour mentioned in bill of lading "A," shipped on board of the Lady Franklin?

Ans. There was not.

33rd x-int. Were these facts in reference to the flour mentioned in Exhibit "A" shipped on other vessels and not on the "Lady Franklin" known to the libelants prior to their filing their libel?

51 Ans. I informed them immediately after the loss that it was shipped by the "Water Witch."

34th x-int. Do you know, or have you been informed that the one hundred barrels of flour set out in the Southward and Woodbury libel were shipped on the Water Witch on or about the 7th of November?

Ans. I was informed so immediately after the loss by Mr. Courtenay.

35th x-int. Did you communicate such information to Suthard and Woodbury?

Ans. I did; immediately.

36th x-int. Have you any knowledge that any part of the said one hundred barrels was on the Lady Franklin?

Ans. I have not; the agent told me they were shipped by the "Water Witch."

37th x-int. State whether to your knowledge the flour mentioned in Exhibit "A" was issued for the benefit of the consignees; and if so, whether they have made any claim against any insurance company on account of the loss of the same on the Water Witch, or received any money on account of insurance?

(Question objected to by proctors for libelants, because it makes no difference to claimant.)

52 Ans. It was issued for the benefit of the consignees; they have made a claim on account of the loss of the same on the "Water Witch." I don't know of my own knowledge of their receiving any money, but have been informed by some of the parties,

their counsel, that they have received some money from the insurance company which insured this flour; I understand it was for the insurance on this flour.

38th x-int. In what company did you insure the 340 barrels?

Ans. In the Buffalo Mutual.

39th x-int. On what vessel did the policy describe the flour as being shipped?

Ans. The "Lady Franklin."

40th x-int. The loss which the company paid was a loss which occurred on the Water Witch and not on the "Lady Franklin"?

Ans. Yes.

41st x-int. Was any flour which was shipped on board of the Lady Franklin ever lost to your knowledge?

Ans. No.

42nd x-int. Did you insure the 100 barrels of flour sent to
53 Southard and Woodbury?

Ans. I did not because I was not ordered to.

43rd x-int. When you had received the orders for flour from these consigners and delivered the same at the warehouse, and drawn for the price, whose property did you consider the flour to be?

Ans. The consignees; it was not mine.

44th x-int. Was the flour in Exhibit "A" insured in their name as their property?

Ans. It was.

45th x-int. What length of time did the flour delivered by you at the warehouse of Courtenay remain in store on the average before it was forwarded?

Ans. From a day to a week, and sometimes two weeks, dependent on the arrival of a boat.

46th x-int. How many different shipments of flour had you made in course of the two years to these parties at different times by this line?

Ans. Twenty-five certainly.

47th x-int. In all these shipments had it been the usual course of the business for the flour on hand in the warehouse to be
54 shipped by the first steamer of the line that arrived?

Ans. Yes.

48th x-int. Would you have made any objection to receiving the bill of lading in this case if the same had been made out by Courtenay in the name of the Water Witch, the vessel on which the flour was actually shipped, instead of the Lady Franklin?

(Question objected to because the witness has already said that he made the agreement to go by the Lady Franklin.)

Ans. I would not have made any objection.

49th x-int. In making out the bill of lading to Southard & Woodbury, and the bill of lading marked Exhibit "A," did not Courtenay without actual examination give you these bills, under the impression and belief on his part that the flour had been shipped on the Lady Franklin?

Ans. I don't know whether he made any examination; I presume he thought it had been shipped by the Lady Franklin.

50th x-int. Did he not in fact sign these bills of lading under a mistake as to the vessel in which the flour actually was shipped?

Ans. He did.

55 *Re-examination by Mr. Rae.*

1st int. Did he not sign the bill of lading for the vessel he agreed to send the flour on?

(Question objected to by Mr. Larned, on the ground that it is a repetition of the question previously put and answered.)

Ans. Yes.

2nd int. In your conversation with Mr. Courtenay in reference to the shipment of this flour on the "Lady Franklin," include all the flour that was shipped under the bill of lading in Southard & Woodbury's case and the flour mentioned in Exhibit "A" and "B," and was all this flour one entire shipment?

Ans. The conversation included all this flour, and it was sent down from day to day. I do not know how I got two bills of lading in Butler & King shipment. They gave them to me and I took them.

Re-examination by Mr. Larned.

1st x-int. In the conversation which you have referred to you mention a thousand barrels as the amount to be shipped by you; was any more shipped except the three lots which you have referred to?

Ans. I think there was some shipped to some other parties, some two or three hundred barrels. This was shipped on the Lady Franklin. I think it was shipped to Twitchell & Chandler. This is
56 simply an impression whether I sent any more than those mentioned in the bills of lading for the libelants.

EDWARD SANDERSON.

Exhibit A.—Bill lading st'r Lady Franklin.

Exhibit "A."

GRAND TRUNK RAILWAY OF CANADA,
Milwaukee, November 9, 1863.

Shipped in good order and condition by H. Courtenay, as agent and forwarder, for account and at the risk of whom it may concern, on board the steamer Lady Franklin, whereof Ira Hinkley is master, now in the port of Milwaukee, and bound for port Sarnia, the following articles, as here marked and described, to be delivered in like good order and condition as aforesaid on the margin, or to his or their assigns or consignees, upon paying the freight and charges as noted below, the dangers of navigation, fire, and collision excepted.

In witness whereof the said master of said vessel hath affirmed to two bills of lading of this tenor and date, one of which being accomplished, the other to stand void.

Butler, King & Thurlow, Portland, 340 barrels flour Fulton to Portland, p. bbl. 1 90.

H. COURTENAY,
Ag't G. T. Ry. Steamers.

A. T. GALT, *N. P.*

57 *Exhibit B.—Bill lading st'r Lady Franklin.*

Exhibit B.

GRAND TRUNK RAILWAY OF CANADA,
Milwaukee, Nov. 10th, 1863.

Shipped in good order and condition by H. Courtenay, as agent and forwarder, for account and at the risk of whom it may concern, on board the propeller Lady Franklin, whereof Hinkley is master, now in the port of Milwaukee, and bound for port Sarnia, the following articles are here marked and described, to be delivered in like good order and condition as addressed on the margin, or to his or their assigns or consignees, upon paying the freight and charges as noted below, the dangers of navigation, fire, and collision excepted.

In witness whereof the said master of said vessel hath affirmed to two bills of lading, of this tenor and date, one of which being accomplished, the other to stand void.

Butler, King & Thurlow, 240 barrels flour, Arcade, 1.00, .40, 1.00. Nov. 27 and 28. Portland, fr't thro. to Portland, p. bbl. 1 90.

120 C. M. L. & Co., 120 K. B. &

H. COURTENAY,
Ag't G. T. R. R. Steamers.

A. T. GALT, *N. P.*

58 UNITED STATES OF AMERICA, *Northern District of Illinois:*

I, Azariah T. Galt, a notary public for the city of Chicago, in said district, authorized by an act of Congress to take and certify oaths and affirmations, do hereby certify that the foregoing deposition was taken before me, by the consent of the parties thereto. I further certify that on the said 23rd day of June, A. D. 1865, I was attended by Rob't Rae, esq., proctor for libelants, and by E. C. Larned, esq., proctor for respondent, and by the said witness, who is of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the causes aforesaid; and the deposition was by me reduced to writing in the presence of the said witness and from his statement, and after carefully reading the same to the said witness, he subscribed the same in my presence; I have retained the said deposition in my possession for the purpose of delivering the same with my own hand, open, into the court for which the same was taken. And I do further certify that I am not of counsel nor proctor for either of the parties in the said deposition and

caption named, nor in any way interested in the event of the causes named in the said caption.

59 In testimony whereof I have hereunto set my hand and notorial seal this 23rd day of June, A. D. 1865.

[SEAL.] AZARIAH T. GALT,
Notary Public.

[5-cent rev. stamp, cancelled.]

Notary's fee p'd by A. T. Atwater, esq., $15; witness' fee and milage p'd by libelants' proctor $10.

Endorsed: Filed Dec. 21, 1865. Wm. H. Bradley, cl'k.

60 Deposition of Amos S. King and Cyrus Thurlow, taken de bene esse before George E. B. Jackson, esq., United States commissioner at Portland, in the State of Maine, on the seventh day of August, A. D. 1865, on behalf of the libelants.

Deposition of Amos S. King.

Interrogatory first. What is your name, age, place of residence and occupation?

1st. In answer to the first interrogatory, I say, my name is Amos S. King; my age forty-five years; my place of residence Portland, Maine; my occupation that of a merchant.

Interrogatory second. Do you know any of the parties to this suit?

2nd. In answer to the second interrogatory I say, that I am one of the libelants and know the other libelants; the libelants were Amos S. King, Alonzo Butler and Cyrus Thurlow; Alonzo Butler now resides in Michigan; Thurlow resides in Westbrook, Maine,

Interrogatory third. State whether you have ever seen a

61 bill of lading, copy of which is hereto annexed, marked Exhibit "A;" if yea, state the circumstances under which you first saw it.

3rd. In answer to the third interrogatory I say, that the original bill of lading, a copy of which is hereto annexed marked Exhibit A, was received by King, Butler and Thurlow by due course of mail from Milwaukee, from Edward Sanderson, accompanied by another bill of lading of 240 barrels Arcade Mills flour of a much lower price than the 340 barrels Fulton Mills flour, named in the annexed bill of lading.

Interrogatory fourth, If in answer to the third foregoing interrogatory, you say that you have seen the original of the bill of lading marked Exhibit A, state if you know whether any money was advanced on the flour therein described, and if you do know that any money was advanced, state by whom it was advanced, how much, and under what circumstances it was paid.

4th. In answer to the fourth interrogatory I say, that I have seen said original bill of lading, of which Exhibit A is a copy, at the same time that said firm of King, Butler and Thurlow received a draft

drawn by Edward Sanderson, of Milwaukee, on Butler, King and Thurlow for amount of purchase for the flour mentioned in said bill of lading, and the one accompanying, referred to in my last answer,

62 and in payment thereof said draft was accepted by said firm and paid at maturity for three thousand and sixty-eight dollars and twenty-five cents with New York exchange; the draft was dated Nov. 11th, 1863, accepted Nov. 17th, 1863, and paid Nov. 20th, 1863; the exchange added, which we paid, was three dollars eighty-three cents.

Interrogatory fifth. State if you know how many barrels of flour mentioned and described in the bill of lading, copy of which is marked Exhibit A, were never delivered to the consignees named in said bill of lading; state your means of knowing that said flour was never delivered to the said consignees, and state the brands that were not delivered.

5th. In answer to the fifth interrogatory I say, two hundred ninety barrels of Fulton Mills flour described in the bill of lading referred to, has never been delivered to the consignees named; my means of knowledge are that I was one of said firm named as consignees; knew all the flour received by said firm and should have known if any had been so delivered; the brands not delivered were "Fulton Mills."

Interrogatory sixth. State if you know what was the value per barrel of the flour mentioned and described in the bill of lading, copy of which is marked Exhibit A, at the time when it ought to have been delivered to said consignees, after paying the freight and charges thereon.

6th. In answer to the sixth interrogatory I say, Fulton

63 Mills flour could have been sold at $8\frac{50}{100}$ per barrel at the time when said flour referred to ought to have been delivered to said consignees. On the 18th November, 1863, we sold 200 barrels of same brand of flour at that price, viz., $8\frac{50}{100}$ per barrel; that was the fair market price of flour at that grade at that time in Portland, although, possibly, a higher rate may have been had in some instances; the flour that arrived of the lot mentioned in bill of lading referred to, viz., fifty barrels of Fulton Mills flour, paid Grand Trunk railroad for freight and charges $1 90 per barrel.

Interrogatory seventh. State if you know what was the highest value per barrel of the flour mentioned and described in exhibit marked A, at any time between the date of said exhibit and the day on which you answer these questions at Portland, in the State of Maine, and include the freight and charges paid; state the highest price per barrel.

7th. In answer to the seventh interrogatory I say, Fulton Mills flour has been sold in Portland market, including freight and charges, as high as thirteen dollars fifty cents per barrel between the date of said exhibit and the day I answer this question, (August 7th, 1865;) some small lots may have been sold at even higher rates.

Interrogatory eighth. If in answer to interrogatory fifth, you

64 say that a certain number of barrels of flour mentioned and de-

scribed in Exhibit A, was never delivered to the consignees thereof; state, if you know, what amount of damage the owners of said flour sustained by the non-delivery thereof; state the nature and character of said damage, how it was occasioned, and all the particulars relating thereto.

8th. In answer to the eighth interrogatory I say, that King, Butler and Thurlow had contracted to sell on arrival, one-half of said consignment of Fulton Mills flour at eight dollars fifty cents per barrel, and if said flour had arrived, the other half would have been sold at that rate, or even higher by the lot, at the time said flour was due in Portland, which was the latter part of November, 1863; in July or August 1864, the same flour was worth in Portland, thirteen dollars per barrel by the lot, and in small quantities thirteen dollars fifty cents per barrel; after hearing that 290 barrels of this consignment had been lost, and trying from Nov. 24th, 1863, the date of first being informed thereof, until February, 1864, to obtain redress for our loss and damages, I went to Milwaukee for the purpose of ascertaining in regard to it; not finding the Lady Franklin there I went to Chicago and Detroit in search of her and her owners, and to ascertain about the loss; I was absent three weeks, and expended two hundred seventy-five dollars for my personal expenses
65 and in obtaining information relative to said loss; my time was worth at least five dollars per day while so absent; I claim as damages, the value of said 290 barrels of flour in Portland, less the freight and charges on said flour from Milwaukee to Portland, at one dollar ninety cents per barrel, at the date it should have arrived in Portland, viz., the last of November, 1863, and before the 2nd day of December, 1863; there were fifty barrels of this consignment which came to hand in Portland, December 1st, A. D. 1863, and the 290 barrels additional should have come to hand at as early a day; I claim also the amount of my expenses paid as above to the west, and my time spent, viz., three weeks at five dollars per day, and interest on the whole from December 1st, 1863.

Interrogatory ninth. Do you know or can you state any other matter or things touching the matters in question in this cause, which may tend to the benefit or advantage of the libelants named in said cause; if yea, set forth the same and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, information and belief, together with your reasons thereon.

9th. In answer to the ninth interrogatory, I say that I have answered fully, in reply to previous interrogations, except as follows: King, Buttler & Thurlow bought said flour of Edward Sand-
66 erson and paid him by honoring his draft on us for same. At the time, relying on the bill of lading of which a copy is annexed, and which had been forwarded to us, we believed that said flour had all been shipped on board said steamer Lady Franklin, and at the time of our acceptance and payment of said draft we knew nothing of any mistake relative thereto, but supposed the flour was on board the Lady Franklin and would come forward by the regular course of business. We have received but 50 barrels of the 340 barrels called

for by the bill of lading. The balance we understand by report to have been shipped on board another vessel. Sanderson's draft on us for said flour was paid November 20th, 1863. Hhaving paid out our money on the faith of this bill of lading, we claim that all our damage and loss by reason of the non-delivery thereof should be made good by the vessel.

Cross-interrogatories.

Cross-int. 1st. Are you the parties who have filed the libel in this cause?

1st X. In answer to the first cross-interrogatory, I am one of the libelants.

" " 2d. In the libel filed in said cause, you state that one
67 Edward Sanderson, as your agent at Milwaukee, caused the said flour to be shipped to you, and took said bill of lading to you for the same, and made his draft on you for the value of said flour; state whether all the money paid by you on account of said flour was paid for the purchase money—cost and charges on said flour so purchased for you by said Sanderson.

2d. In answer to the second cross-interrogatory, I say that King, Butler & Thurlow bought said flour of Edward Sanderson, together with some "Arcade Mills flour." He was the merchant miller; the flour was to be delivered to us at Milwaukee, but Sanderson guaranteed the freight from there to Portland at 90 cents per barrel. All the money paid Sanderson by us was for the purchase money of said flour and costs and charges thereon; his draft on us being for one dollar per barrel less than the full amount of such cost and charges; that being the difference between the freight we had to pay and the price guaranteed by Sanderson.

" " 3d. In the liber filed in this cause it is stated that fifty (50) bbls. of the said 340 bbls. mentioned in the said bill of lading had been delivered to you. State when the said 50 bbls. were delivered to you; and by what vessel the same were carried from Milwaukee to Port Sarnia. State all you know in relation to the matter inquired of, and all the information you have received concerning the
68 same.

3d. In answer to the third cross-interrogatory, I say that some time after we paid said Sanderson's draft for the flour, fifty barrels of that consignment were delivered to us December 1st, 1863, at Portland. I do not know by what vessel the same were carried from Milwaukee to Sarnia, and have no recollection that I ever heard or knew the name of such vessel.

Cross-int. 4th. Were you not informed when you filed the libel in this cause that said fifty barrels of the said alleged shipment of 340 bbls. mentioned in said bill of lading had been in fact shipped on another vessel, and such shipment duly received, and that said 50 bbls. had never in fact been shipped on said Lady Franklin?

4th. In answer to the fourth cross-interrogatory, I say that said fifty barrels of said shipment had come to Portland before the filing of this libel, but I have no recollection of ever being informed nor do

I know by what vessel said flour was shipped from Milwaukee to Sarnia. I have no recollection of ever being informed whether said fifty barrels were or were not on the Lady Franklin.

Cross-int. 5. Had you been informed or did you know when you filed the libel in this cause that no part of said 340 bbls. men-
69 tioned in said bill of lading had ever been shipped on the Lady Franklin?

5th. In answer to the fifth cross-interrogatory, I say I reply to my previous answers for a reply to this interrogatory.

Cross-int. 6. State whether at the time you filed said libel or at any time you knew or had been informed that 50 bbls. of the said 340 bbls. mentioned in said bill of lading set out in said libel had been shipped to you on board the Antelope, at or about Nov. 1, 1864, and 290 bbls. of the same on the Water Witch at or about Nov. 7, and that no part of the said 340 bbls. had been shipped on board said Lady Franklin. State all you know and all the information you have on the matters inquired of.

6th. In answer to the sixth cross-interrogatory, I say, I have no recollection of ever having been informed that any part of said 350 barrels had been shipped on the Antelope, but previous to filing said libel and after paying said draft, I was informed that 290 barrels of said shipment had been shipped on the Water Witch and that that vessel had been lost with all on board. I knew nothing of the kind, and had heard nothing of the kind when the draft was paid.

Cross-int. 7. State what, if any, claims you have made on any insurance company or companies on account of any alledged loss of the whole or any part of the said 290 bbls. not received by you,
70 on the steamer Water Witch, and if any such claim was made state when, where, to whom, and all the facts relating to the same.

7th. In answer to the seventh cross-interrogatory, I say that some time in the month of February, A. D. 1864, in behalf of King, Butler & Thurlow, I employed Robert Rae, of Chicago, as counsel to collect our claim for the 290 barrels of flour which did not reach us of the consignment mentioned in the original of Exhibit A. We had insurance upon the flour in the Buffalo Mutual Insurance Company, as shipped by the Lady Franklin. Mr. Rae demanded indemnity for our loss both of the insurance company and of those interested in the Lady Franklin. We are informed by Mr. Rae that the insurance company advanced to him a portion of our claim, with the understanding that the present suit should be prosecuted against the Lady Franklin. If we should recover we should expect to refund the money so advanced to the insurance company, first indemnifying ourselves for all losses and expenses. I have no copy of the policy, but understand it to be on flour by the Lady Franklin. Neither have I any receipt or agreements, or copies of any such made by Mr. Rae and the insurance company in our behalf. I am not advised that there has been any settlement of our claim against the insurance company for said loss, only that they have made an advance on our claim, with the understanding that our claim against the

71 Lady Franklin should be prosecuted. The flour was not fully insured. King, Butler & Thurlow have received from the insurance company, through Mr. Rae, seventeen hundred twenty-nine dollars and seven cents. King, Butler & Thurlow have never any claim on any insurance company or companies on account of any alledged loss of the whole or any part of said 290 barrels not received by said firm on the steamer Water Witch, as their bill of lading was for flour shipped by the Lady Franklin, and their insurance thereon.

Cross-int. 8. State whether you or any person on your behalf has received any money from any insurance company or agent for or on account of any alledged loss of any flour shipped to you on board the steamer Water Witch; and if so, how much, and for what flour the same was paid; what, if any, receipts were given for such payments, and who has such receipts. State whether the loss of 290 bbls. on said Water Witch, which were shipped in your name, has been adjusted and settled, and give all the particulars of such adjustment, stating all the facts fully and particularly.

8th. In answer to the eighth cross-interrogatory I say, I refer to my answer to the next preceding interrogatory for an answer to this. The claim made on the Buffalo Mutual Insurance Company was for the 290 barrels of flour called for in the bill of lading, of which Exhibit A is a copy. I do not know who has the receipts for the

72 money advanced by the Buffalo Mutual Insurance Company, or what the nature of them was, other than I have heretofore stated.

Cross-int. 9. What was the market value of the flour mentioned in said Exhibit A, in Milwaukee, at the time of the shipment thereof, and what was the amount of the freight and charges thereon to Portland?

9th. In answer to the ninth cross-interrogatory, I say that I think six dollars and fifty cents was the market value of the flour mentioned, in Milwaukee, at the time of said shipment, and the freight and charges to Portland were one dollar and ninety cents per barrel. King, Butler & Thurlow had contracted some time previous for a large quantity of flour when the price was somewhat less, and Sanderson had guaranteed the freight to Portland not to exceed ninety cents per barrel. Before this flour was shipped freights to Porland had advanced to one dollar ninety cents per barrel, and, in consequence, he drew on us for one dollar per barrel less than the purchase price to make his agreement good. This made our loss per barrel one dollar greater than if the flour had come to hand.

Cross-int. 10. State how you arrive at the market value of said flour in Portland, and give the market value of the same

73 brand in said Portland for five consecutive days prior and subsequent to the time of the arrival of the two hundred and forty barrels actually shipped to you by the Lady Franklin, Nov. 10th, 1864.

10th. In answer to the tenth cross-interrogatory, I say that I arrive at said market value of said flour in Portland from actual sales

of flour of the same brand by King, Butler & Thurlow, made November 18th, 1863, when they sold 200 barrels of same brand at $8 50-100 per barrel. The 240 barrels of Arcade Mills flour shipped by Lady Franklin, Nov. 10th, 1863, arrived in Portland as follows: 100 barrels arrived Nov. 24th, 1863; 100 barrels arrived Nov. 26th, 1863, and 40 barrels arrived Nov. 28th, 1863. I am unable to state what the market value of said Fulton Mills flour was in Portland within the time inquired about positively, except that we sold six days before, as I have above stated, at $8 50-100 per barrel; and I am certain that the market price was not less, to my knowledge, than that sum for any time within the three months next following, and I do not think it has been sold for less than that price at any time since. I am not aware that any 240 barrels of flour were shipped to us by the Lady Franklin, Nov. 10th, 1864, and I have answered this question as relating to the shipment by that steamer of Nov. 10th, 1863.

Cross-int. 11. State the day when you received the two hundred and forty barrels of flour shipped to you on board the Lady Franklin, and for which a bill of lading was made to you, dated Nov.
74 10, 1864, and what brand said flour was, and for what price the same was sold.

11th. In answer to the eleventh cross-interrogatory, I say that I have no knowledge that we ever received any 240 barrels, or any other amount of flour shipped to us by Lady Franklin by any bill of lading, dated Nov. 10th, 1864; nor do I know anything about any brand of such shipment, nor the price for which any such flour was sold.

AMOS S. KING.

The claimant objects to direct interrogatories 7 and 8, and to the answers thereto, as asking for matter which is not legal or competent evidence.

GOODWIN, LARNED & GOODWIN,
Proctors for Claimant.

Deposition of Cyrus Thurlow.

Interrogatory first. What is your name, age, place of residence, and occupation?

1st. In answer to the first interrogatory I say, my name is Cyrus Thurlow; my age forty-five years; my place of residence, Westbrook, Maine; my occupation that of a merchant.

Interrogatory second. Do you know any of the parties to this suit?

2d. In answer to the second interrogatory I say, that I am one of the libelants who constituted the late firm of King, Butler & Thurlow.

75 Interrogatory third. State whether you have ever seen a bill of lading, copy of which is hereto annexed, marked Exhibit A. If yea, state the circumstances under which you first saw it.

3d. In answer to the third interrogatory I say that King, Butler

& Thurlow received the original bill of lading, of which Exhibit A is a copy, by mail from Milwaukee, from Edward Sanderson, together with a bill of lading of 240 bbls. Arcade Mills flour, of a lower price than the 340 bbls. Fulton Mills flour named in annexed Exhibit A.

Interrogatory fourth. If in answer to the third foregoing interrogatory, you say that you have seen the original of the bill of lading marked Exhibit A, state if you know whether any money was advanced on the flour therein described, and if you do know that any money was advanced, state by whom it was advanced, how much and under what circumstances it was paid.

4th. In answer to the fourth interrogatory, I say that, at the same time that King, Butler & Thurlow received the bill of lading of which Exhibit A is a copy, they received also a draft, drawn by Edward Sanderson, of Milwaukee, on Butler, King & Thurlow, for the amount of the flour mentioned in the two bills of lading mentioned in my last answer, and in payment for the same. Our firm accepted and paid at maturity this draft, which was for $3,068 25-100, with New York exchange, viz: $3 83-100; the date of the
76 draft was Nov. 11th, 1863; we accepted it Nov. 17th, 1863, and paid it Nov. 20th, 1863.

Interrogatory fifth. State if you know how many barrels of the flour mentioned and described in the bill of lading, copy of which is marked Exhibit A, were never delivered to the consignees named in the said bill of lading. State your means of knowing that said flour was never delivered to the said consignees, and state the brands that were not delivered.

5th. In answer to the fifth interrogatory, I say that King, Butler & Thurlow have never received 290 barrels the Fulton Mills flour described in said bill of lading. I was one of said firm, and should have known if said flour had been delivered to or received by them. The brand of the flour not received was "Fulton Mills."

Interrogatory sixth. State if you know what was the value per barrel of the flour mentioned and described in the bill of lading, copy of which is marked Exhibit A, at the time when it ought to have been delivered to said consignee, after paying the freight and charges thereon.

6th. In answer to the sixth interrogatory I say, that Fulton Mills flour, at the time said flour ought to have reached our firm, could have been sold at $8 50-100 per bbl. We sold 200 bbls. of the same brand at that price, Nov. 18th, 1853, and that was the fair market value of flour of that grade, at that time, in Portland. The flour of this consignment that reached our firm, viz., fifty bbls. "Fulton
77 Mills," cost us, for freight and charges $1 90-100 per barrel.

Interrogatory seventh. State if you know what was the highest value per barrel of the flour mentioned and described in Exhibit marked A, at any time between the date of said exhibit and the day of which you answer these questions, at Portland, in the State of Maine, and include the freight and charges paid. State the highest price per barrel.

7th. In answer to the seventh interrogatory I say, that including

freight and charges, the same brand of flour has been sold in Portland marked as high as $13 50-100 per barrel, between the date referred to, Nov. 9th, 1863, and the date I answer this, viz., Aug. 8th, 1865.

Interrogatory eighth. If in answer to interrogatory fifth, you say that a certain number of barrels mentioned and described in Exhibit A was never delivered to the consignees thereof, state if you know what amount of damages the owners of said flour sustained by the non delivery thereof; state the nature and character of said damages, how it was occasioned, and all the particulars relating thereto.

8th. In answer to the eighth interrogatory I say, that our firm had agreed to sell, on arrival, one-half of said shipment of Fulton Mills, at $8 50-100 per bbl., and, if said flour had arrived, the other half could have been sold at that price or higher by the lot at the time,
78 when said flour should have reached Portland, in the latter part of November, 1863. In the summer of 1864, said grade of flour was worth in Portland thirteen dollars per barrel by the lot, and in small quantities, thirteen dollars and fifty cents per bbl. Nov. 25th,1863, our firm first heard that 290 bbls. of this lot had been lost, andwe then sought from that time until February, 1864, to get payment for our damage on account thereof. In the latter month, Mr. King, of said firm, went to the West to see what could be done in the way of obtaining compensation for the loss of this flour. He was absent three weeks on this business. Our firm claim in this suit the value of said 290 bbls. of flour in Portland, less freight and charges from Milwaukee, at $1 90-100 per bbl., at the date it should have been received in Portland, between the last of November and second of December, 1863. Fifty barrels of this consignment reached Portland December 1st, 1863, and the balance should have been here by that date. We also claim Mr. King's expenses paid in his journey at the west on account of this flour, which amounted to $275 00, and payment for his time while absent, at five dollars per day, with interest, from December 1st, 1863.

Interrogatory ninth. Do you know, or can you state any other matter or thing touching the matters in question, in this cause, which may tend to the benefit or advantage of the libelants named in said cause? If yea, set forth the same and all the circumstances
79 and particulars thereof fully and at large, according to the best of your knowledge, information and belief, together with your reasons thereon.

9th. In answer to the ninth interrogatory I say, that said firm of King, Butler & Thurlow bought said flour of Edward Sanderson, and paid his draft for the amount thereof, relying on the original bill of lading, of which Exhibit A is a copy, and believing that said 340 bbls. mentioned therein were all on board the steamer Lady Franklin. We knew nothing to the contrary until after accepting and paying said draft; only fifty barrels of the flour named in said bill of lading ever reached said firm, and we understood the remaining two hundred ninety barrels came by another vessel and were lost.

80 *Cross-interrogation.*

Cross-int. 1st. Are you the parties who have filed the libel in this cause?

1st x. In answer to the first cross-interrogatory, I further depose and say that I am one of the libellants.

" " 2d. In the libel filed in said cause, you state that one Edward Sanderson, as your agent at Milwaukee, caused the said flour to be shipped to you, and took said bill of lading to you for the same, and made his draft on you for the value of said flour; state whether all the money paid by you on account of said flour was paid for the purchase money, cost and charges on said flour so purchased for you by said Sanderson.

2d x. In answer to the second cross-interrogatory, I say that King, Butler & Thurlow, bought the flour in question with some Arcade Mills flour of Edward Sanderson, to be delivered at Milwaukee, Sanderson guaranteeing that the freight should be ninety cents per barrel. The draft paid by us to said Sanderson was for the purchase money of this flour and the cost and charges thereon, and it was for one dollar less per barrel than the full amount of the purchase, to make good his quantity, that the freight should be ninety cents per bbl., whereas in fact it was then one dollar ninety cents per barrel.

81 " " 3d. In the libel filed in this cause, it is stated that fifty (50) bbls. of the said 340 bbls. mentioned in the said bill of lading had been delivered to you; state when the said 50 bbls. were delivered to you, and by what vessel the same were carried from Milwaukee to Port Sarnia. State all you know in relation to the matter inquired of, and all the information you have received concerning the same.

3d x. In answer to the third cross-interrogatory, I say that fifty barrels of this consignment were delivered to one firm at Portland, December 1st, 1863, ten days after we had paid the draft for the whole purchase; I have no knowledge how same came from Milwaukee to Sarnia, and do not recollect ever having heard the name of the vessel bringing it.

Cross-int. 4th. Were you not informed when you filed the libel in this cause, that said fifty barrels of the said alleged shipment of 340 bbls. mentioned in said bill of lading had been in fact shipped on another vessel and such shipment duly received and that said 50 bbls. had never in fact been shipped on said Lady Franklin?

4th x. In answer to the fourth cross-interrogatory, I say that 50 bbls. of this shipment reached Portland before this libel was filed, but I do not know by what vessel they came from Milwaukee to Sarnis, and I have no recollection of ever being informed that same

82 were or were not on the Lady Franklin.

Cross-int. 5. Had you been informed or did you know when you filed the libel in this cause, that no part of said 340 bbls. mentioned in said bill of lading had ever been shipped in the Lady Franklin?

5th x. In answer to the fifth cross-interrogatory, I say that I refer to previous answers for a reply to this question.

Cross-int. 6. State whether at the time you filed said libel or at any time you knew or had been informed that 50 bbls. of the said 340 bbls. mentioned in said bill of lading set out in said libel had been shipped to you on board the Antelope at or about Nov. 1, 1864, and 290 bbls. of the same on the Water Witch, at or about Nov. 7, and that no part of the said 340 bbls. had been shipped on board said Lady Franklin. State all you know and all the information you have on the matters inquired of.

6th x. In answer to the sixth cross-interrogatory, I say I do not recollect that I was ever informed that any of said 340 bbls. were shipped on the Antelope. Before filing this libel and after said draft was paid, I learned that 290 barrels of said shipment were loaded on the Water Witch and that she had been wrecked. Prior to the payment of the draft, I knew nothing of this.

Cross-int. 7. State what if any claims you have made on
83 any insurance company or companies on account of any alleged loss of the whole or any part of the said 290 bbls. not received by you, on the steamer Water Witch, and if any such claim was made, state when, where, to whom, and all the facts relating to the same.

7th x. In answer to the seventh cross-interrogatory, I say that my partner, A. S. King, employed Robert Rae, esq., of Chicago, as attorney for the libelants to collect of the proper persons our claims for the 290 bbls. of flour called for by the original bill of lading of which Exhibit A is a copy. This flour was insured, as shipped per Lady Franklin, in the Buffalo Mutual Insurance Co. I understand that Mr. Rae demanded payment for said flour both of the owners of the Lady Franklin and of said insurance company, and that the insurance company advanced to him a portion of our claim, with the understanding that a suit should be instituted against the Lady Franklin. In case we recover in this suit, the money so advanced by said company would be refunded after indemnifying ourselves for all losses and expenses. I have no copy of the insurance policy, but I understand it to be on flour per Lady Franklin; neither have I any receipts or copies of any made by Mr. Rae, and the insurance company, or agreements relative to this matter. I know nothing about any settlements of the claim of our firm against said insurance company for said loss. They have advanced on account thereof
84 the sum of seventeen hundred twenty-nine dollars and seven cents, which sum we have received through Mr. Rae, and this was advanced with the understanding that our claim against the Lady Franklin should be prosecuted. Our flour was not fully insured; my firm has never made any claim on any insurance company or companies for any loss of the whole or any part of said 290 bbls. not received by us by steamer Water Witch, as our bill of lading was for flour shipped per Lady Franklin, and our insurance was on that shipment.

Cross-int. 8. State whether you or any person on your behalf has

received any money from any insurance company or agent for or on account of any alleged loss of any flour shipped to you on board the steamer Water Witch, and if so, how much and for what flour the same was paid, what if any receipts were given for such payments, and who has such receipts. State whether the loss of 290 bbls. on said Water Witch which were shipped in your name, has been adjusted and settled, and give all the particulars of such adjustment, stating all the facts fully and particularly.

8th x. In answer to the eighth cross-interrogatory, I say that I refer to the next preceding answer for my reply to this interrogatory. We claimed of the Buffalo Mutual Insurance Co. payment for the 290 bbls. of flour that never reached us of the shipment referred
85 to in Exhibit A. I know nothing about where the receipts referred to are other than I have above stated, or what their nature was.

Cross-int. 9. What was the market value of the flour mentioned in said Exhibit A, in Milwaukee, at the time of the shipment thereof, and what was the amount of the freight and charges thereon to Portland?

9th. x. In answer to the ninth cross-interrogatory I say, that I think six dollars and fifty cents per bbl. in Milwaukee was the market price for this brand of flour at the time of shipment. The freight and charges to Portland were $1 90-100 per bbl. My firm contracted for this and other flour when the price was lower, and Sanderson then guaranteed the freight to Portland should not exceed ninety cents per bbl. When this flour was shipped freight to Portland was $1 90-100 per bbl., and consequently Sanderson drew on us for one dollar per barrel less than the purchase price, according to his agreement. We lost one dollar per barrel therefore more on this account than if the flour had reached us.

Cross int. 10. State how you arrive at the market value of said flour in Portland, and give the market value of the same brand in said Portland for five consecutive days prior and subsequent to the time of the arrival of the two hundred and forty barrels actually shipped to you by the Lady Franklin, Nov. 10th, 1864.

86 10th x. In answer to the tenth cross-interrogatory, I say that I arrive at said market value of flour in Portland from actual sales of same brand by my firm Nov. 18th, 1863, when we sold 200 bbls. at $8 50-100 per bbl. I know nothing about the arrival of any 240 bbls. shipped us by the Lady Franklin, Nov. 10th, 1864, and cannot therefore give the market value of same brand for the time inquired about; I have no recollection of having any such flour at or about the time inquired about.

Cross-int. 11. State the day when you received the two hundred and forty barrels of flour shipped to you on board the Lady Franklin, and for which a bill of lading was made to you dated Nov. 10th, 1864, and what brands said flour was, and for what price the same was sold.

11th x. In answer to the eleventh cross-interrogatory, I say that I have no knowledge relative to any such shipment by bill of lading,

Nov. 10th, 1864, and I cannot therefore answer this question more definitely.

CYRUS THURLOW.

The claimant objects to direct-interrogatories 7 and 8 and to the answers thereto as asking for matter which is not legal or competent evidence.

GOODWIN, LARNED & GOODWIN,
Proctors for Claimant.

87. *Exhibit A.—Bill of lading.—Str Lady Franklin.*

GRAND TRUNK LINE STEAMERS.

No—— *Milwaukee, Nov. 9th,* 1863.

Shipped in good order and condition by H. Courtenay, as agent and forwarder, for and on account of and at the risk of whom it may concern, on board the steamer Lady Franklin, whereof Ira Hinckley is master for the present voyage, now in the port of Chicago, and bound for Port Sarnia, the following articles as herein marked and described, and to be delivered in like good order and condition as addressed on the margin, or to his or their consignees or assigns, (the leakage of all liquids, the wastage of grain and seed in bags, dangers of fire, navigation, and collision, only excepted,) upon paying the freight and charges as noted below.

In witness whereof, the master or agent of said steamer hath affirmed to two bills of lading, all of this tenor and date, one of which being accomplished the other to stand void.

88 *Exhibit A.—Butler, King, and Thurlow, Portland.*

340 barrels flour, "Fulton." Freight thro' to Portland per barrel $1 90.

H. COUNTENAY,
Agt. G. T. Line Steamers.

For Grand Trunk Line. *Agent.*

On the hearing of said cause the respondent read in evidence the following testimony, to wit:

89 *Respondent's testimony.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Be it remembered that on this twenty-ninth day of April, in the year one thousand eight hundred and sixty-five, I, Daniel Goodwin, jr., a commissioner, duly appointed by the Circuit Court of the United States for the northern district of Illinois, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress

entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared before me at my office in the city of Chicago, in said northern dis-
90 trict of Illinois in certain causes depending in the District Court of the United States for the northern district of Illinois, at Chicago, between Daniel Lyons *et al. vs.* The Propeller Lady Franklin, &c.; John King *et al. vs.* the same; Thomas Kehoe *et al. vs.* the same; Willard Kitts *et al. vs.* the same; Daniel W. Solloway *et al. vs.* the same; George Small *et al. vs.* the same; Owen A. Stafford *et al. vs.* the same; T. W. Dunbam *et al. vs.* the same; William L. Southard *et al. vs.* the same; Jefferson Wiley, survivor &c., *vs.* the same; George Dunbar *et al. vs.* the same; Edgar M. Doolittle *et al. vs.* the same; the following proctors, to wit: S. A. Goodwin for Albert E. Goodrich, claimant and respondent, and Messrs. Waite, Russell, and Avery, proctors for some of the said libellants.

Whereupon S. A. Goodwin, esq., proctor for said claimant, offered in evidence a certain notice for examination of witnesses in said causes before me this day directed to Messrs. Waite & Towne, Runyon & Avery; Robert Rae, esq., and E. W. Russell, esq., proctors for the said libellants, with acknowledgments of the service thereon endorsed by said several proctors, which said notice is hereto annexed marked Schedule A.

Also a certified copy of the last enrollment of the propeller
91 Lady Franklin, which is hereto annexed marked Exhibit No. 1.

Whereupon, on motion of the proctor for the claimant, the further examination of witnesses was adjourned to 9 o'c. a. m. of Tuesday, the 16th day of May, 1865.

I further certify that on Tuesday the 16th day of May, 1865, at 9 o'c. a. m., I was attended by S. A. Goodwin, esq., proctor for the claimant, and by the proctors for the libellants, when it was agreed that the case of the Security Insurance Company against the proceeds of the sale of the propeller Lady Franklin, commenced since the adjournment of this examination, be added to the cases mentioned in Schedule A, in which testimony is being taken by stipulation and notice.

Whereupon the said claimant, Albert E. Goodrich, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the causes aforesaid, and he did thereupon under objection of the proctors for the libellants, depose and say as follows, to wit:

Deposition of Albert E. Goodrich.

Interrogatory first. What is your name, age, occupation and place of residence?

Ans. My name is Albert E. Goodrich; I am owner of steamboats and running the same on the lakes. I am thirty-eight years of age. I reside in the city of Chicago.

Int. 2. Are you the claimant in the cases now before the court?
Ans. Yes, sir.
Int. 3. Were you the owner of the Lady Franklin in the summer of 1863?
92 Ans. Yes, sir.
(Claimant's proctor produces a certified copy of license No. 18 for the propeller Lady Franklin, for the year 1863, which is hereto annexed marked Exhibit No. 2.)
Int. 4. Are you the A. E. Goodrich mentioned in the license?
Ans. I am.
Int. 5. Do you know Joseph F. Kirkland?
Ans. I do.
Int. 6. Look at the paper now shown you and hereto annexed marked Exhibit No. 3, and state what you know of said paper, by whom and when it was executed and delivered.
Ans. I sold Mr. Kirkland the propeller Lady Franklin, for twenty-eight thousand dollars; this paper contains the conditions of the sale; it was executed in Chicago at the date of the paper, the tenth day of July, 1863, by Joseph F. Kirkland and me; those are the signatures of Mr. Kirkland and myself; he paid me ten thousand dollars down. The propeller Lady Franklin was in Green Bay, Wisconsin, at the time, or running between Green Bay and Sarnia. I gave Mr. Kirkland an order on the captain of her to deliver her to him, Kirkland; Mr. Kirkland took possession of her in pursuance of said sale and order.
Int. 7. Why did not Mr. Mead, mentioned in the contract, execute the same?
(Objected to by Mr. Towne, proctor, &c.)
Ans. I did not see Mr. Mead from the time I made this sale
93 to Kirkland, until I rec'd a letter from him, saying he should repudiate the contract. He refused to execute the contract. Mr. Kirkland had in the meanwhile taken possession of the boat.
Int. 8. Did Kirkland, from that time during the summer of 1863, possess, hold, and run the said propeller as his own property?
Yes, sir; he did; and also during the winter of 1863 and 4, and in the summer of 1864 until the fall; it was in Oct. I took her back.
Int. 9. Who hired and appointed the master of her from the time he took possession of her until the fall of 1864?
Ans. Mr. Kirkland.
Int 10. On whose account and for whose benefit was she possessed and run during that time from July, 1863, to Oct., 1864?
(Objected to by Mr. Towne.
Ans. Mr. Kirkland.
Int. 11. Had you any interest in or control over the freight or earnings of the propeller Lady Franklin, from July, 1863, to Oct. 1864?
Ans. I had not.
Int. 12. Were the notes called for by the contract of July, 1863, ever given by the parties or either of them?
Ans. They were not.

Int. 13. State what, if any further payments were made under that contract, or if the consideration money for the purchase of the Lady Franklin by said Kirkland or in his behalf.

94 Ans. I had an open running account with Mr. Kirkland, and at the close of the season of 1863, by said account I was indebted to him from six to eight hundred dollars, which I credited him on account of the purchase price for said propeller, under said contract; that was all he ever paid me except the first payment of ten thousand dollars.

(Claimant's proctor here offers in evidence a license to said propeller for the year 1864, or a certified copy of the same, which is hereto annexed, marked Exhibit No. 4.)

Int. 14. Look at Exhibit No. 4, and state who took out the license of which this is a copy.

Ans. I went to the custom-house with Capt. Keith, who was then master, and took out a license in my own name, at the request of said Keith, who said he had been so requested to do by Kirkland. Kirkland had before then asked me to go to the custom-house and get out his papers for him, and I had said I would.

(Claimant's proctor offers two letters of J. F. Kirkland to A. E. Goodrich, hereto annexed, and marked Exhibit No. 5 and No. 6.)

Int. 15. By whom are said letters written?

Ans. By Joseph F. Kirkland.

Int. 16. Did you, in pursuance of those letters, take repossession of said propeller, and about what time?

Ans. I did; about the middle of Oct. I took possession of

95 and laid her up at Chicago.

Int. 17. Where did Mr. Kirkland reside?

Ans. In the city of Sheboygan, Wisconsin, during the season of 1863. He moved to Green Bay, also in the State of Wisconsin, in the spring of 1864, and has resided there ever since.

Int. 18. Was Kirkland frequently in Chicago during that time?

Ans. He was; I should think, on an average, of twice a month, and sometimes for a week at a time. He was here several times as often as two days in a week, for a month before the boat sailed in the spring of 1864. He had another boat here that he was fitting out at the same time.

Int. 19. Who repaired and fitted up the Lady Franklin in the spring of 1864, before she made her first voyage?

Ans. She was fitted out under the direction of Kirkland.

Cross-examination.

By Mr. Towne:

Int. 1. Who first caused the Lady Franklin to be libelled, by whom was she libelled, and who was the purchaser at the sale?

Ans. She was libelled by the clerk of the boat, Alanson Bottsford. He had a claim against her for wages, and I told him the only way

he could get his money was by libelling her and getting a sale. I purchased her at the sale for $15,000.

A. E. GOODRICH.

Subscribed and sworn to before me, this 16th day of May, 1865.

D. GOODWIN, JR.

96 United States District Court, northern district of Illinois, in admiralty.

Schedule A.—D. Goodwin, jr., U. S. commissioner.

DANIEL LYONS *et al.*
vs.
PROPELLER LADY FRANKLIN.

JOHN KING *et al.*
vs.
PROPELLER LADY FRANKLIN.

THOMAS KEHOE *et al.*
vs.
PROPELLER LADY FRANKLIN.

WILLARD KITTS *et al.*
vs.
PROPELLER LADY FRANKLIN.

DANIEL W. SOLLOWAY *et al.*
vs.
PROPELLER LADY FRANKLIN.

GEORGE SMALL *et al.*
vs.
PROPELLER LADY FRANKLIN.

OWEN A. STAFFORD *et al.*
vs.
PROPELLER LADY FRANKLIN.

T. W. DUNHAM
vs.
PROPELLER LADY FRANKLIN.

97 WILLIAM L. SOUTHARD *et al.*
vs.
PROPELLER LADY FRANKLIN.

JEFFERSON WILEY, survivor, &c.,
vs.
PROPELLER LADY FRANKLIN.

GEORGE DUNBAR *et al.*
vs.
PROPELLER LADY FRANKLIN.

EDGAR M. DOOLITTLE *et al.*
vs.
PROPELLER LADY FRANKLIN.

GENTLEMEN: Please to take notice that we shall take the testimony of witnesses in the above-entitled causes on Saturday next, the 29th inst., at 10 o'clock a. m., before Daniel Goodwin, jr., a United States commissioner, at his office No. 7, Smith & Nixon's Building, Chicago.

Chicago, April 28, 1865.

Yours, &c., GOODWIN, LARNED & GOODWIN,
Proctors for Respondent.

To Messrs. Waite & Towne, Messrs. Runyan & Avery, Robert Rae, esq., E. W. Russell, esq., proctors for libellants.

98 It is agreed between the proctors of the respective parties in the within entitled cases, that the testimony may be taken in behalf of the claimant, A. E. Goodrich, pursuant to the within notice in one of the cases, and read and used in each of the others, so far as the same is applicable, with the same force and effect as if taken in each separately, subject to all legal and just exceptions and objections.

Chicago, April 28, 1865.

E. W. RUSSELL,
Proctor for J Wiley.
E. F. RUNYON,
Proctor for Small et al.
ROBT. RAE.
DOOLITTLE & MILLER.

Waite & Towne, proctors for some of the above-named libellants, and for whom we sign this stipulation.

Service admitted April 28, 1865.

E. W. RUSSEL,
For J. Wiley.
WAITE & TOWNE,
Per D. E. F. RUNYON,
For Small.

Exhibit No. 1.—License of enrollment.

Exhibit No. 1.—D. Goodwin, jr., comm'r.

Northern, northeastern, and northwestern frontiers of the United States.

Permanent enrolment.—Fourteen. No. 14.

In conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships and vessels, &c.," passed the 18th February, 1793, and "An act to regulate the foreign and coasting trade on the northern, northeastern, and

northwestern frontiers of the United States, and for other pur-
99 poses," passed the 2d March, 1831, and the acts of the 7th July, 1838, and 29th July, 1850, A. E. Goodrich, of Chicago, Illinois, sole owner, having taken or subscribed the oath required by the said acts, and having sworn that he is a citizen of the United States, sole owner of the propeller or vessel called the Lady Franklin, of Chicago, whereof Morris is at present master; and as he hath sworn, is a citizen of the United States, and that the said propeller or vessel was built at Chicago, Ills., in the year 1861, as appears by the certificate of her last enrollment, dated at the port of Chicago, December 29th, A. D. 1862, numbered one hundred seventy-four, (174,) now surrendered by reason of change of owners.

And said certificate of enrollment having certified that the said prop. or vessel has one deck and one mast, and that her length is one one hundred thirty-nine $\frac{5}{12}$ feet; her breadth, twenty-five $\frac{6}{12}$ feet; her depth, ten $\frac{2}{12}$ feet, and that she measures three hundred forty-one tons sixteen ninety-fifths; that she is a propeller, has a round stern and a plain head.

And the said A. E. Goodrich having agreed to the description and admeasurement above specified, and sufficient security having been given in conformity with the terms of the said acts, the said propeller has been duly enrolled at the port of Chicago.

Given under my hand and seal of the port of Chicago, this first day of April, in the year one thousand eight hundred and sixty-three.

T. J. KINSELLA, *Dep. Coll.*

100 THE UNITED STATES OF AMERICA, *District of Chicago, ss*:

PORT OF CHICAGO.

I hereby certify that the within is a correct copy of the last enrollment of the within named vessel, as appears by the books of this office.

Given under my hand and seal of office at the port of Chicago, this twenty-eighth day of April, A. D. 1865.

[SEAL.] T. J. KINSELLA, *Dep. Coll.*

[5-ct. rev. stamp, cancelled.]

Permanent enrollment, No. 14.

Prop. Lady Franklin, April 1, 1863. Exhibit No. 1.

D. GOODWIN, JR.,
U. S. Commissioner.

Exhibit No. 2.—Permanent enrollment.

Northern, northeastern, and northwestern frontiers of the United States.

Permanent license.—No. 18.

DISTRICT OF CHICAGO:

In pursuance of an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels, &c.," passed the 18th February, 1793; and "An act to regulate the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, and for other purposes," passed the 2d March, 1831, and the acts of the 7th July 1838, and passed 29th July, 1850, A. E. Goodrich, of Chicago, Illinois, sole
101 owner, and Morris, master, having given bond that the propeller, called the Lady Franklin, whereof the said Morris is master, burden three hundred forty-one $\frac{1}{95}$ tons, as appears by her last enrollment, dated at the port of Chicago, April 1st, A. D. 1863, numbered fourteen, (14,) shall not be employed in any trade while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other vessel, license is hereby granted for the said propeller, Lady Franklin, to be employed in conformity with the terms of said acts for one year from the date thereof and no longer.

Given under my hand and seal of office at the port of Chicago, in the said district, this first day of April, in the year one thousand, eight hundred and sixty-three.

T. J. KINSELLA, *Dep. Coll.*

Exhibit No. 2.—D. Goodwin, jr., U. S. Comm'r.

UNITED STATES OF AMERICA, *District of Chicago, port of Chicago, ss:*

102 I hereby certify that the within is a true copy of a license issued at said port, for the within-named vessel, on the first day of April, A. D. 1863.

Given under my hand and seal of office at the port of Chicago, this eleventh day of May, A. D. 1665.

[SEAL.] T. J. KINSELLA, *Dep. Coll.*

[U. S. 5-cent rev. stamp, cancelled.]

Exhibit No. 3.—D Goodwin, jr., U. S. Comm'r.—Contract of sale.

This agreement, made this tenth day of July, one thousand eight hundred and sixty-three, between Albert E. Goodrich, of Chicago, Cook county, State of Illinois, of the first part, and Joseph F. Kirkland and James H. Mead, on behalf of the German Bank, Sheboygan, Sheboygan co., State of Wisconsin, of the second part, witnesseth, that the said party of the first part, in consideration of the payment

hereinafter mentioned to be made by the party of the second part, has agreed, and does hereby agree to sell and convey to the party of the second part the good propeller, Lady Franklin, together with all and singular, her anchors, chains, cables, rigging, tackle, apparel and furniture of every name, kind and description whatever, according to her enrollment, No. 32, dated Chicago, March 28th, 1862, built at Chioago, Illinois, in the year 1861. That she has one deck,
one mast, and that her length is one hundred and thirty-nine
103 and 8-12 feet, her breath twenty-five and 6-12 feet, her depth
ten and 2-12 feet, and that she measures three hundred and forty-one tons sixteen ninety-fifths; that she is a propeller, has a round stern, and a plain head, for the sum of twenty-eight thousand dollars, ($28,000,) payable as follows: Ten thousand dollars ($10,000) at the sealing and delivery of this agreement, the receipt whereof is hereby acknowledged, and the remainder to be [to be] paid as follows: Eighteen thousand dollars ($18,000) during the next ensuing eighteen months, at the rate of one thousand dollars ($1,000) on the tenth day of each month, commencing August the 10th, 1863, with interest at the rate of seven per cent. per annum, according to the tenor and effect of eighteen promisory notes, all dated July 10th, 1863, and payable at the office of the Merchants' Savings Loan & Trust Co., in the city of Chicago, with interest at the rate of seven per cent. per annum.

Now, the said party of the first part does hereby agree to sell and convey to the said part of the second part by a good and sufficient bill of sale, the above described propeller, upon the full performance by the party of the second part of the following conditions, but not otherwise; that is to say:

1st. That the party of the second part shall pay each and every of the said promissory notes at the time they severally become due and
payable, according to the tenor and effect thereof; and that if
104 default shall be made in the payments of either of said notes
at maturity, the said party of the first part may at his option, at any time after twenty (20) days from the happening of such default, declare a forfeiture of the rights of the party of the second part under the agreement, either by notice to be given to the party of the second part or to any person who may be in possession of said propeller, or by written notice to be deposited in the post office at Chicago, directed to the said party of the seeond part at Sheboygan, Sheboygan co., State of Wisconsin; and from the time of giving or mailing such notice all the rights of the part of the second part under this agreement, either at law or equity, shall wholly and forever cease and determine, and the said propeller, together with all and singular her anchors, chains, cables, rigging, tackle, apparel, and furniture of every name, kind and description whatever, shall revert to the party of the first part the same as if this agreement had not been made, and the party of the first part wholly released and discharged from all liability to make the conveyance aforesaid. The party of the first part shall not be bound to refund any of the money which may have been paid on this agreement, or upon said notes,

but shall retain the same as rent for the said propeller, and not as a penalty.

2nd. The parties of the second part shall keep the said propeller fully insured for the benefit of the party of the first part for the am't due and unpaid—say twenty thousand during the year
105 1863, and twenty thousand dollars during the year 1864.

3rd. Possession of said propeller to be given to said Joseph F. Kirkland and James H. Mead, the 10th day of July, 1863.

J. F. KIRKLAND.
A. E. GOODRICH.

Exhibit No. 4.—*Permanent license, two hundred three,* (*No.* 203.)

NORTHERN, NORTHEASTERN, AND NORTHWESTERN FRONTIERS OF THE UNITED STATES, *District of Chicago* :

In pursuance of an act of the Congress of the United States of America, entitled, "An act for enrolling and licensing ships or vessels, &c.," passed the 18th February, 1793, and "An act to regulate the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, and for other purposes," passed the 2d March, 1831, and the acts of the 7th July, 1838, and 29th July, 1850, A. E. Goodrich, of Chicago, Ill., owner, and Angus Keith, master, having given bond that the propeller called the Lady Franklin, whereof the said Keith is master, burthen 340 16-95 tons, as appears by her enrollment, dated at the port of Chicago, April 1st, A. D. 1863, No. 14, shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other vessel, license is hereby
106 granted for the said propeller, Lady Franklin, to be employed in conformity with the terms of said acts for one year from the date hereof, and no longer.

Given under my hand and seal of office at the port of Chicago, in the said district, this twenty-sixth day of April, in the year one thousand eight hundred and sixty-four.

T. J. KINSELLA,
Dep. Coll.
D. GOODWIN, JR.,
U. S. Comm'r.

Exhibit No. 4.

UNITED STATES OF AMERICA,
District of Chicago, Port of Chicago, ss:

I hereby certify that the within is a true copy of a license issued at said port for the within-named vessel, on the twenty-sixth day of April, A. D. 1864.

Given under my hand and seal of office at the port of Chicago, this eleventh day of May, A. D. 1865.

[SEAL.] T. J. KINSELLA, *Dep. Col.*

[5-ct. rev. stamp, cancelled.]

Exhibit No. 5.—D. Goodwin, jr., U. S. Comm'r.—Letter from J. F. Kirkland to A. E. Goodrich, &c.

GREEN BAY, *Oct. 6th*, 1864.

A E. Goodrich, esq.:

DR. SIR: Mr. Brodie said he would give the "Lady Franklin"
107 full cargo m'ch'ds on way up. The failure of business in this region on ac. of dearth of crops, the break down of the "Franklin" in the spring, the caulking and dry-dock bill, the burning of the Toronto "elevator," the running on the rocks in St. Lawrence river, and consequent expenses, were too many contingencies for us to navigate under, and I see no way for me but to return the boat, bid "good bye" to the $10,000, and make some business strike that will enable me to make things right with you at the earliest practicable moment. We had to make those "elevator" hatches, and build bulkheads in order to meet the requirements of G. T. R. R. in shipping their grain. I explained to you fully why she was not "laid up" as pr. my letter of instructions. The operation has resulted as you predicted, (though from different reasons to some extent,) and I would not permit you to suffer thereby, even temporarily, could it be avoided. I thought to "work out," meet your wishes, and save the $10,000; but all the contingencies have been adverse, and in this matter we are swamped. It was an error the sending the boat to Lake Ontario.

The U. T. Co. have lost the Ogdensburg; possibly they might take the "Franklin," as there are heavy crops of corn and oats to go forward next season from every section except northern Wisconsin, or perhaps the whole of Wisconsin.

Truly yours, *&c.*,

J. F. KIRKLAND.

108 *Exhibit No. 6.—D. Goodwin, jr., U. S. Comm'r.*

GREEN BAY, *Oct. 10th*, 1864.

A. E. Goodrich, esq.:

DR. SIR: I told Capt. Crable to deliver the "Franklin" to you. I don't know of anything else I could do. Kingsbury had to go to Lake Superior on the "Union." I have got to go to Sheboygan, therefore I cannot come to Chicago just now. John B. King is dead; propellers won't trouble him any more.

Truly, yours, &c.,

J. F. KIRKLAND.

Certificate of commissioners.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

I, Daniel Goodwin, jr., a commissioner, duly appointed by the Circuit Court of the United States for the northern district of Illinois, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depend-

ing in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the
109 judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness above named is material and necessary in the cause in the caption of the said deposition named.

I further certify that notification of the time and place of taking the said deposition was served on the proctors for the libellants to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, as appears by Schedule A hereto attached.

I further certify that on the 29th day of April, and the 16th day of May, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by the several proctors as certified to in the foregoing, and by the said witness, who is of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and the deposition was by me reduced to writing in the presence of the said witness, and from his statement, and after carefully reading the same to the said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the clerk of the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the
110 said caption.

In testimony whereof I have hereunto set my hand and seal this sixteenth day of May, in the year of our Lord one thousand hundred and sixty-five.

[SEAL.] DANIEL GOODWIN, JR.,
U. S. Commissioner duly appointed by the Circuit Court of the United States for the Northern District of Illinois.

Endorsed: Filed May 19th, 1865. Wm. H. Bradley, cl'k.

111 U. S. Dis. Court N. D. Ill.

Deposition of Hercules Courteney.

WILLIAM L. SOUTHARD *et al.*
vs.
PROPELLER LADY FRANKLIN.

SIR: Please take notice that we shall take the deposition of H. Courteney in the above-entitled cause on Monday, the 10th inst., at

10 o'clock a. m., before Philip H. Hoyne, a U. S. commissioner for the N. D. of Illinois, at his office in Chicago.

GOODWIN, LARNED & GOODWIN,
Proc. for Resp't.

Dated Chicago, April 8, 1865.

UNITED STATES, *Northern District of Illinois, ss:*

Be it remembered that on the tenth day of April, A. D. 1865, personally appeared Hercules Courtney before me, Philip A. Hoyne, a commissioner appointed by the Circuit Court of the United States in and for the northern district of Illinois, in the eighth circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, etc., to testify and in truth to say, on the part and
112 behalf of the respondent, in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the northern district of Illinois, wherein William L. Southard *et al.* are the libellants and the propeller "Lady Franklin" respondent. And the said witness, being of lawful age, and having been by me first cautioned and sworn to testify the truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify and say as follows, viz:

Ques. 1. What is your name, age, residence, and occupation?

Ans. Hercules Courtney; age 47; residence, Milwaukie; occupation, am employed in a warehouse.

Ques. 2. What was your business in November, 1863?

Ans. I was agent for the Grand Trunk line of propellers running from Milwaukie to Port Sarnia, Canada West.

Ques. 3. Have you as agent for the Grand Trunk line of propellar received and forwarded produce for Edward Sanderson?

Ans. I have.

Ques. 4. Was there shipped by you during the month of November, 1863, as such agent for Edward Sanderson, 100 barrels of
113 flour (Fulton Mills) to Southard & Woodbury, of Portland, Main, and if yea, by what propellar or vessel was said flour shipped?

Ans. I shipped a hundred barrels of flour to those parties on the 7th day of November, 1863, by the propellar Water Witch.

Ques. 5. Did you receive that flour to be shipped by any particular boat?

(Excepted to by libellants, on the ground the bill of lading showes on what propellar it was shipped.)

Ans. I did not; my general practice was to forward the flour by the first propellar in its time as it came into port. The owner of the flour was anxious to have his flour forwarded as expeditiously as possible by the first propellar that would take it.

Ques. 6. Look at the paper marked Exhibit A, and state whether it is a correct copy of the bill of lading of the steamer Water Witch, of November 7th, 1863.

Ans. It is a correct copy, sir.

Ques. 8. Look at the paper marked Exhibit B, and state whether

it is a correct copy of the bill of lading of the propellar Lady Franklin, of November 10th, 1863.

Ans. That's a correct copy, sir.

Ques. 9. Was there any flour in the bill of lading marked
114 Exhibit B—shipped by Edward Sanderson—on board the propellar Lady Franklin; and if so, how much, and to whom was said flour shipped? State fully.

Ans. There was. There were shipped to Tuttle, Kidder & Co., Skowhegan, Main, 200 barrels of flour; David Keazer, Portland, Main, 62 barrels of flour; and I think Twitchell & Champlin, Portland, Main. 200 barrels of flour. There was shipped to Butler, King & Thurlow, Portland, Main, 200 barrels of flour; Blake, Jones & Co., Portland, Main, 74 barrels of flour. This flour was all shipped the 10th day of November, 1863.

Ques. 10. Was there any other flour, shipped by Edward Sanderson at this time, on board the propellar Lady Franklin?

(Objected to.)

Ans. There was not.

Ques. 11. Have you ever seen any other bill of lading for this 100 barrels of flour shipped Southard & Woodbury; and if so, in whose handwriting was said bill of lading, and on what vessel did said flour purport to be shipped?

Ans. Yes, sir; I saw a bill of lading purporting to be made to go by the Lady Franklin. This bill of lading was made by Henry
115 Ludwig, a clerk in my office.

Ques. 12. When did you see that bill of lading?

Ans. After the Lady Franklin sailed, and immediately after the the loss of the Water Witch.

Ques. 13. Explain, as far as you know, how Mr. Ludwig came to make this bill of lading.

Ans. This bill of lading was made by him in my absence, for I am acquainted with his handwriting. I was not present.

Ques. 14. When did you first see this bill of lading last referred to—when and in whose possession was it?

Ans. I first saw that bill of lading in Mr. Sanderson's office, in his possession, soon after the loss of the Water Witch.

Ques. 15. Did you know of any such bill of lading being in existence up to that time?

Ans. I did not.

Ques. 15. What was done with the original bill of lading of which Exhibit A is a copy?

Ans. The original bill of lading was handed to the clerk of the propeller Water Witch before she sailed.

Ques. 16. Did you receive any particular instruction from Mr. Sanderson in regard to shipping this 100 barrels of flour by any particular boat?

(Objected to.)

Ans. I did not.

116 1 x-ques. (The copy of the bill of lading attached to the libel is here shown to the witness.) The witness says this is a copy of a bill of lading which I saw in the hands of Mr. Sanderson.

2 x-ques. How long has Mr. Ludwick been in your office?

Ans. He had been with me all that season.

3 x-ques. Has he been in the habit of signing your name to bills of lading in the same way as this bill of lading is signed?

Ans. He has.

4 x-ques. What was the name of this line of steamers?

Ans. Grank Trunk line of steamers.

5 x-ques. What steamers composed the line?

Ans. The line was composed of the steamers Montgomery, B. F. Wade, Antelope, Water Witch, Winslow, and the Lady Franklin. The Lady Franklin made 4 trips during the season on this line, one in the spring and three in the fall.

6 x-ques. Was the bill of lading attached to the libel signed by Ludwic before the second or third trip of the Lady Franklin?

Ans. It was signed before the third trip.

7 x-ques. Do you know where the flour mentioned in the bill of lading was at the time that the bill of lading mentioned in the libel was signed?

117 Ans. I know that the flour was on board the propeller Water Witch before the bill of lading attached to the libel was signed.

8 x-ques. How do you know it?

Ans. I put it on board myself.

9 x-ques. Where did you obtain the flour?

Ans. The flour was delivered to me by Mr. Sanderson for shipment during 10 days previous to the sailing of the Water Witch.

10 x-ques. Had all the flour been delivered on the wharf and the warehouse on it before the 19th of November, 1863?

Ans. Yes, sir; it was all delivered previous to that.

11 x-ques. Had the master of any of the line of steamers been in the habit of exacting bills of lading for shipments made at your wharf for the line?

(Objected to.)

Ans. Not to my knowledge.

12 x-ques. Who had been in the habit of executing bills of lading at your dock at Milwaukee on behalf of the steamer of that line?

Ans. I have been in the habit of executing those bills of lading myself.

13 x-ques. Had Mr. Ludwic any authority from you to sign bills of lading for him?

Ans. He was in the habit of signing bills of lading in my absence.

118 14 x-ques. The bill of lading which you made out, Exhibit A, was for flour shipped on the Water Witch, a copy of which you delivered to the master of the vessel. Did you make out a duplicate and deliver it to Mr. Sanderson, or forward it to Southard & Woodbury?

Ans. I did not.

H. COURTENAY.

Certificate of commissioner.

UNITED STATES, *Northern District of Illinois, ss:*

I, Philip A. Hoyne, a commissioner appointed by the Circuit Court of the United States, and for the northern district of Illinois, in the eighth circuit, under and by virtue of the acts of Congres, do hereby certify that the reason for taking the foregoing deposition and the fact is that the same was taken in pursuance notice, and both parties by their counsel were present at such examination and consented thereto.

I further certify that a notification of the time and place of taking said deposition was made out and served up Robert Rae, esq., proctor for libellant.

I further certify, that on the 10th day of May, A. D. 1865, I was attended by Robert Rae, esq., of counsel with the said libellant
119 and by F. C. Goodwin of counsel with the said respondent, and by the witness, who was of sound mind and lawful age, and the witness having been by me carefully examined and cautioned and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness who subscribed the same in my presence; and I have retained the said depositon in my possession for the purpose of transmitting the same by hand to the court for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof, I have subscribed my name and affixed my seal, this 10th day of April, A. D. 1865.

[SEAL.] PHILIP A. HOYNE,
U. S. Commissioner, Northern District of Illinois.

120 *Exhibit A.—Str. Water Witch.*

Exhibit A.—P. A. Hoyne.

(Copy.)

MILWAUKEE, *Nov. 7th* 1863.

Shipped on board the steamer Water Witch, whereof Ryder is master, the following, subject to damages of navigation, fire and collission :

Butler, King & Thurlow, Portland, Me., 290 b'r'ls, (two hundred and ninety,) "Fulton;" my charges	8 70
Frt. through to Portland, per b'r'l	$1 87
Southard & Woodbury, Portland, 100 flour, "Fulton;" my charges	3 00
Frt. through to Portland, per b'r'l	$1 87
L. Wilder, North Stratford, N. H., 10 b'r'ls flour, "Fulton;" my charges	30
Frt. thr. to North Stratford, per b'r'l	$1 57

121 *Exhibit B.—Bill of lading.—Prop. Lady Franklin.*

Exhibit B.—P. A. Hoyne.

(Copy.)

MILWAUKEE, *November 10th*, 1863.

Shipped on board the prop. Lady Franklin, whereof Hinckley is master, the following, subject to dangers of navigation, fire and collission:

Tuttle, Kidder & Co., Skonhegan, Me., 100 b'r'ls flour, "Cascade," 100 do do, "Arcade," 200 b'r'ls flour; my charges 6 00
Frt. thr. to Y. Junction, per b'r'l $1 87
David Keazer, Portland, 62 b'r'ls flour, "Cascade;" my charges 1 86
Frt. thr. to Portland, per b'r'l $1 87
Order of Nash & Bates, Portland, 100 b'r'ls flour, "Milwaukie;" my charges 3 00
Frt. thr. to Portland, per b'r'l $1 87
Lane & Millikin, Waterville, Me., 100 b'r'ls flour, "Douglas;" my charges 3 00
Frt. thr. to D Junction, per b'r'l $1 87
Bradley & Webb, Portland, 100 b'r'ls flour, "Douglas;" my charges 3 00
Frt. thr. to Portland, per b'r'l $1 87
122 A. L. Loring, Yarmouth, Me., 200 b'r'ls wheat; my charges 6 00
Fr't thr. to Yarmouth per b'r'l $1 87
Ac. A. Leduc, for David Matheson, care Ontars Bank, Montreal, 27 b'r'ls flour, "Baraboo river," 10 b'r'ls flour, Logansville, 37 b'r'ls; my charges 93
Fr't thr. to Montreal per b'r'l, payable in Canada currency. 92
Gilkey & Denison, Island Pond, Vt., 50 b'r'ls flour, "Wantousa;" my charges 2 75
Fr't to I. Pond per b'r'l $1 57
Norton, Chapman & Co., Portland, 100 b'r'ls flour, "Winter Tyler Mills;" my charges 3 00
Fr't thr. to Portland p'r b'r'l $1 87
Twitchell & Champlin' Portland, 200 b'r'ls flour, "Arcade;" my charges 6 00
Fr't thr. to Portland per b'r'l $1 87
E. Beaman & Co., Belfast, Me., 47 b'r'ls flour, "Portage City," 10 b'r'ls flour, "Wisconsin," 5 b'r'ls flour, "Rice Bros."—62 b'r'ls; my charges 1 86
Fr't thr. to Portland per b'r'l $1 87
123 H. Burrell, Dodge county, Canaan, Me., 50 b'r'ls flour, 23 b'r'ls flour, Milwaukee City—73 b'r'ls; my charges 2 19

	Fr't to D. Junction per b'r'l	1 87
	G. H. Thayer & Co., Plymouth, Me., 50 b'r'ls flour, "East Troy Lake;" 25 b'r'ls flour, "Empire Watertown;" 36 b'r'ls flour, Snow Flake—111 b'r's flour; my charges	3 33
	Fr't to D. Junction per b'l	1 87
	Stetson & Co., Bangor, Me., 200 b'r'ls flour, "Pride of Minnesota;" 25 b'r'ls, "H. Warrens;" 25 b'r'ls, Troy City—250 b'r'ls; my charges	7 50
	Fr't thr. to D. Junction per b'r'l	1 87
	A. P. Atwood, Bangor, Me., 100 b'r'ls flour, "Dayton;" 100 b'r'ls flour, Sauk county; 50 b'r'ls flour, Annaton—250 b'r'ls; my charges	7 50
	Fr't thr. to D. Junction per b'r'l	1 87
	Owen & Co., Bath, Me., 300 b'r'ls flour, "Owen & Co.;" 16 b'r'ls flour. Arcade—316 b'r'ls; my charges	9 48
	Fr't thr. to Y. Junction per b'r'l	1 87
	Blake, Jones & Co., Portland, Me., 24 b'r'ls flour, Fulton; my charges	2 22
	Fr't thr. to Portland per b'r'l	1 57
	E. McKinney & Co., Portland, Me., 50 b'r'ls flour, Fulton; my charges	1 50
	Fr't thr. to Portland per b'r'l	1 87
124	John Mathewson & Son., Montreal, 15 b'r'ls tallow, J. M. & Son., 4,224; my charges	42
	Fr't to Montreal per b'r'l, payable in Canada currency	49
	W. A. Frye & Co., New Port Me., 239 bags wheat, 586 bush.; my charges	5 86
	Fr't thr. to D. Jun., per bush	43
	Butler, King & Thurlow, Portland, Me., 240 b'r'ls flour, Arcade; my ch'g's	7 20
	Fr't thr. to Portland p'r b'r'l	1 87
	Mrs. Mary Lee, Toronto, C. W., 2 boxes H. H. goods; 4 chests; advance ch'g's $6 63; my ch'g's 75	7 38
	Lake fr't make	
	Sarnia to Toronto make	

Endorsed: Filed June 4, 1865. Wm. H. Bradley, cl'k.

125 *Respondent's testimony.*

UNITED STATES OF AMERICA, *Northern District of Illinois*:

Be it remembered, that on this 5th day of January, 1866, I, Izaiah T. Galt, a notary public duly commissioned and qualified for the city of Chicago, in said district, and authorized by an act of Congress to take and certify oaths and affirmations, did cause Hercules Courtenay personally to appear before me, at the office of Messrs. Goodwin, Larned & Goodwin, in the city of Chicago, in said district, to testify on the part of the claimant, Capt. Goodrich, in two certain causes depending in the District Court of the United States for the northern

district of Illinois, in one of which A. S. King *et al.* are libelants, and the proceeds of the sale of propeller "Lady Franklin" is respondent, and in the other William L. Southard *et al.* are libelants, and the same respondent.

Deposition of Hercules Courtenay.

And the said Hercules Courtenay was by me first duly cautioned, and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; I carefully examined the said Hercules Courtenay, and he did thereupon depose and say as follows:

1st int. What is your name, age, occupation, and place of residence?

Ans. My name is Hercules Courtenay; am of lawful age; my occupation at the time was forwarding.

126 2nd int. Have you been sworn in the case of William L. Southard *et al. vs.* same, before.

Ans. I was.

3rd int. State whether any arrangement existed between you and Edward Sanderson, in reference to the forwarding of flour by the Grand Trunk line of propellers, in the summer of 1863; and if so, state what that arrangement was.

(Question objected to by proctor for libelants.)

Ans. Mr. Sansum had been in the habit of shipping flour by our line in common with others. Sending his flour to the warehouse for shipment with an understanding that it should be shipped as fast as opportunity offered, consequently his flour went forth as fast as I had opportunity to ship it by any of the propellers of the line, no reference being made to any particular boat for shipment. He impressed upon me the importance of getting it off as early as practicable.

4th int. Had you any conversation with Mr. Sanderson in the fall of 1863, towards the close of navigation, in regard to sending forward any flour for him by the said line or any of its boats; and if so, what was that conversation, and when was it?

(Question objected to by proctors for libelants.)

127 Ans. During the fall of 1863 shippers were anxious to get off their freights; consequently had to figure to some extent to get the different lots off. About that time—I should think from the fifth to the eighth of November—I expected to load the propeller "Franklin" for Sarnia, and mentioned to Mr. Sanderson, together with others, that the Franklin was expected to load, and I had no doubt that I would be enabled to get his flour off on that boat, or the "Water Witch," which was to sail two days previous to the time we expected the Franklin; that between the two boats I thought there was no doubt that all the flour in the warehouse could go.

5th int. Was there any other propeller mentioned in the line by which the flour could go—I mean in that same conversation?

(Question objected to by proctor for libelants.)

Ans. I think not at that time, as those were the only two boats I expected to load that week or the first of the succeeding week. Mr.

Sanderson was very anxious to get his flour off, and I told him that if the "Water Witch" wanted any freight on her downward trip from Chicago, I would put his flour on, as it was the nearest.

6th int. Did you on the ninth of November, 1863, ship any flour to Butler, King & Thurlow, marked "Fulton," for said Sanderson, on board of the "Lady Franklin," at Milwaukee?

128 (Question objected to by proctor for libelants.)

Ans. I did not, sir.

7th int. Look at libelants' Exhibit "A," annexed to the testimony of Edward Sanderson in this case, and state whether the said paper was given by you to said Sanderson, by whom it was signed, and whether the flour therein mentioned was put on board or shipped on board of the "Lady Franklin"; and if not, how the said paper came to be given by you.

(Question objected to by proctors for libelants.)

Ans. This paper, purporting to be for 340 barrels of flour of the "Fulton" mills, consigned to King, Butler & Thurlow, purporting to have been shipped by the propeller "Lady Franklin," was not signed by myself nor delivered by myself to Mr. Sanderson, but was made out November 9th, 1863, by my clerk, Henry Ludwick, through error; I was not in the office, but I was in the city. I know it was in error, and it was by him delivered to Mr. Sanderson.

8th int. State whether the 340 barrels of flour marked "Fulton," mentioned in said Exhibit "A," was at the date of said Exhibit "A" in your warehouse, of which you were agent; and if not, whether the same had been there in deposit by said Sanderson, and what had been done with the same.

(Question objected to by proctor for libelants.)

129 Ans. It was not in the warehouse at that date; it had been sent down to the warehouse by Sanderson for shipment, and had been previously shipped, of which 340 barrels 290 barrels were shipped by me on the propeller "Water Witch," November 7th, 1863, and fifty barrels of the same lot were shipped on the propeller "Antelope," November 1st, 1863.

9th int. (The witness is here shown the bill of lading copy-book, marked Grand Trunk Railway of Canada.) Does that book contain impressed copies of the bills of lading of the "Antelope," November 1st, 1863, and the Water Witch, November 7th, 1863, and the "Lady Franklin," of Novembr 10th, 1863, marked claim'ts' Exhibit "A," "B," and "C?"

(Question objected to by proctor for libelants.)

Ans. It does.

10th int. State how long before the shipments of said 340 barrels of flour and the 100 barrels to Southard & Woodbury it had been delivered to your warehouse?

(Question objected to.)

Ans. I cannot tell from recollection. The flour may have been laying in the warehouse for two or three weeks; most likely it was, or a portion of it at all events. It was a hurrying time for getting flour off, and this flour may have laid there two or three weeks.

130 11th int. State whether or not there was any arrangement or understanding between Edward Sanderson and yourself that either of the said lots of flour of 340 Fulton, subsequently shipped to Butler, King & Thurlow, or the 100 barrels "Fulton" subsequently shipped to Southard & Woodbury, should be so shipped on any particular propeller of said Grand Trunk line, and what was the arrangement for the shipping of the same.

(Question objected to.)

Ans. There was no particular boat mentioned that the flour should go on, as I testified above. I told Mr. Sanderson I would get his flour off I thought between the "Water Witch" and the Lady Franklin.

12th int. At the time of the conversation referred to in your last answer, had the fifty barrels already been sent forward by the Antelope?

(Question objected to.)

Ans. I think the fifty barrels must have been shipped before this.

13th int. Was there at that time a still further quantity of flour, marked Arcade, 240 barrels, in said warehouse, deposited by said Sanderson, to be sent forward? And if so, what was done with that?

(Question objected to.)

131 Ans. There was 240 barrels of "Arcade" Mills flour in the warehouse sent down by Sanderson, and afterwards shipped by the "Lady Franklin" November 10th, 1863.

Cross-examination.

By Rob't Rae, esq.:

1 x-int. Where was this warehouse situated?

Ans. On Milwaukee river, in the city of Milwaukee.

2d x-int. Was the flour shipped from the warehouse into the boat?

Ans. It was.

3rd x-int. What was the name of the warehouse?

Ans. The Blue Warehouse.

4th x-int. What was it used for at this time?

Ans. It was used for the purpose of receiving and shipping property by the Grand Trunk line of steamers.

HERCULES COURTENAY.

132 *Certificate of commissioner.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

I, Azariah T. Galt, a notary public duly commissioned and qualified for the city of Chicago, in said district, and authorized by an act of Congress to take and certify oaths and affirmations, do hereby certify that the foregoing deposition was taken before me by consent of the proctors for the respective parties, in pursuance of the annexed notice.

I further certify that on said fifth day of January, 1866, I was attended by Stephen Goodwin, esq., one of the proctors for claimant,

Capt. Goodrich, and by Rob't Rae, esq., proctor for the libelants, and by the said witness, who is of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and the deposition was by me reduced to writing in the presence of the said witness, and from his statement, and after carefully reading the same to the said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same, with my own hand, open into the court, for which the same was taken.

133 And I do further certify that I am not of counsel nor proctor for either of the parties in the said deposition and caption named, nor in any way interested in the event of the causes named in the said caption.

In testimony whereof, I have hereunto set my hand and notarial seal this fifth day of January, 1866.

[SEAL.] AZARIAH T. GALT, *Notary Public.*

[5-cent revenue stamp, canceled.]

Notary's fees p'd by proctors for claimant, Goodrich, 5.

Witness fee and mileage from Milwaukee, paid by Capt. Goodrich, $10.

Endorsed: Filed Jan'y 13, 1866. Wm. H. Bradley, cl'k.

STEAMER ANTELOPE, PORT SARNIA,
November 1st, ——3.

133¼ Claimant's Exhibit A, in Butler, King & Thurlow *vs.* Proceeds of sale of propeller Lady Franklin, and referred to in answer to 9th direct interrogatory of H. Courtney's deposition, taken by T. A. Galt, commissioner, Jan'y 5th, 1860. A. T. G. (See page 129 of transcript, as follows:)

Exhibit A.—H. Courtney's deposition.—Bill of lading.—St'r Antelope, taken from Grand Trunk railway.—Letter-press copy referred to.

McLellan & Moses, Bath, Me., G. T. R. R. to P. Junction., 300 br'ls flour, Fulton; my ch'gs 9 00
Fr't this to P. Junction p'r br'l 1 82.

Wood, Mathews & Co., Belfast, Me., 25 br'ls flour, H. Warner; 25 br'ls flour, Snow Flake; 50 b'rls flour, Empire, Watertown; 100 b'rls; my ch'gs 3 00
F'rt this to Portland p'r br'l 1 82.

F. Mead, Biddeford, Me., 25 b'rls flour Bertscty's best; my ch'gs 75
Fr't this to Portland p'r b'rl 1 82.

Apc. J. B. Dor, South Berwick, Me., 100 b'rls flour, C. W. Hodson, best; Wm. H. Morton advance iss. 6 00; my ch'gs, 3 00 ..... 9 00
F'rt this to Junction p'r b'rl 1 97.

J. A. Stanley, Farmington, Me., 50 b'rls flour, Fulton; my ch'gs 1 50
Fr't this to Junction br. 1 87.

133½ Cloudenan, Stevens & Co., Portland, 100 b'rls flour, Fulton; my ch'gs 3 00
F'rt this to Portland p'r b'rl 1 87.
Butler, King & Thurlow, Portland, 50 b'rls flour, Fulton; my ch'gs 1 50
F'rt this to Portland p'r b'rl 1 87.
Apc. Bellenger & Lawrence, care E. Silman, Boston, 26 b'rls flour, Canon, Falls City. 1 do. Marble, 27 b'rls; my ch'gs 81
F'rt this to Boston p'r b'rl 1 82.

28 56

STEAMER ANTELOPE, (Butler,)
BUFFALO, *November 1st*, ——3.

H. H. Hurd & Co., Utica, N. Y., care H. Niles & Co., Buffalo, 50 b'rls flour, Orangeville; 50 b'rls do., Gennessee Spain; my ch'gs 3 00
F'rt this to Buffalo p'r b'rl 77 c.
John W. Whittemore, Dartford, New York, care H. Niles & Co., Buffalo, N. Y., 100 b'rls flour; advance ch'gs. 32 00
my ch'gs 3 00

35 00

F'rt this to New York p'r b'rl $1 72. Canal 95 c.; Lake 77 c.

$66 56

H. COURTNEY, *Ag't.*

134 U. S. Dist. Ct., N. D., Ill.

Notice to take deposition.

A. S. KING *et al.*
vs.
PROCEEDS OF PROPELLER FRANKLIN. } In admiralty.

SIR: Please to take notice that we shall examine Sam'l T. Atwater as a witness on behalf of the claimant, Albert E. Goodrich, before J. T. Galt, esq., com., at our office, No. 22 McCormick's building, on Thursday, March 22, at 10 o'clock a. m., in the above cause.

Also you are requested to produce on said examination a certain policy of marine insurance, dated about Nov. 11, 1863, procured by Ed. Sanderson for said libelants in this case of the Buffalo Mutual Insurance Company upon three hundred and forty barrels of flour, purporting to be shipped upon the propeller Lady Franklin or upon some other propeller of the Grand Trunk line of propellers, or in default thereof secondary evidence will be given of the contents thereof. Dated March 20, 1866.

Yours, &c.,

GOODWIN, LARNED & GOODWIN,
Proctors for A. E. Goodrich, Claimant.

To ROBT. RAE, Esq., *Libelants' Proctor.*

135 *Exhibit A.—Ins. policy.—Certificate of insurance.*

MUTUAL INSURANCE COMPANY OF BUFFALO, N. Y.,
WM. B. HIBBARD, *Agent*,
Office corner Fowler and West Water street,
Milwaukee, Nov. 11, 1863.

[5-cent rev. stamp, cancelled.]

This certifies that E. Sanderson, insured under and subject to the conditions of policy No. 150, issued by the Mutual Insurance Company of Buffalo, in the sum of thirty-six hundred dollars, on 58 bbls. flour in board cargo of the pro. Lady Franklin, at and from Milwaukee, to shipped at the rate of 1 40 per cent., which premium of $50 60, is hereby acknowledged to have been received, loss (if any) payable to the order of himself herein and return of this certificate.

This certificate of insurance is not valid until countersigned by Wm. B. Hibbard, agent for this company at Milwaukee.

Countersigned at Milwaukee, this 11th day of Nov., 1863.

WM. B. HIBBARD, *Agent.*
J. L. WEATHERBY, *Secretary.*

Endorsed: Edw. Sanderson.

Received, Chicago, March 24th, 1864, from Sam. T. Atwater, agent of the Mutual Insurance Company of Buffalo, eighteen hundred thirty-two 40-100 dollars, in full for loss of 290 bbs. flour, in-
136 sured under the within certificate, but shipped and lost on propeller Water Witch, on or about the 11th day of November, 1863; said payment being made as follows:

Fourteen hundred thirty-two 40-100 dollars in cash; four hundred dollars in said Atwater's sight draft on J. L. Weatherby, esq., sec't'y, Buffalo, New York.

ROB. RAE,
Att'y for Ed. Sanderson, and King, Butler & Thurlow.

[2-cent rev. stamp, cancelled.]

Exhibit B.—Agreement to subrogate Ins. Co.

Whereas the Mutual Insurance Company, of Buffalo, has, this twenty-fourth day of March, A. D. 1864, paid to King, Butler, and Thurlow, of Portland, Maine, the sum of eighteen hundred and thirty-two dollars and forty cents, on a loss of 290 barrels of flour, insured by said company under certificate of insurance, dated Milwaukee, November 13th, 1863, which said flour is lost, the said insurance company is hereby subrogated to all the rights of the said King, Butler, and Thurlow, in said flour, to the extent of the said eighteen hundred and thirty-two dollars and forty cents, with power to sue in their own name or in the name of the said King, Butler, and Thurlow, for the whole of said loss, all things, vessels or persons, that are liable for the same.

Dated at Chicago, this 24th March, A. D. 1863.

ROBERT RAE,
Att'y in fact of King, B. T.

137 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Be it remembered that on this 22nd day of March, A. D. 1866, I, Azariah T. Galt, notary public, duly commissioned and qualified for the city of Chicago, in said district, did cause Samuel T. Atwater personally to appear before me, at the office of Messrs, Goodwin, Larned & Goodwin, in the city of Chicago, in said district, to testify on the part of the respondent, in a certain cause depending in the District Court of the United States for the northern district of Illinois, at Chicago, wherein A. S. King *et al.* are libelants, and the proceeds of propeller Lady Franklin is respondent.

Deposition of S. T. Atwater.

And the said Samuel T. Atwater was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; I carefully examined the said Samuel T. Atwater, and he did thereupon depose and say as follows, to wit:

1st int. Notice filed requesting proctor for libelants to produce certain papers, which are produced, and proctor for libelants objects they are not competent testimony. A copy of which paper, called "certificate of insurance," dated Milwaukee, Nov. 11th, 1863, which is hereto attached, marked Exhibit "A."

1st int. What is your name, age, occupation, and place of residence?

138 Ans. My name is S. T. Atwater; am of lawful age; I am insurance agent, and reside in Chicago.

2nd int. Were you, in 1863, and are you now, the Chicago agent for the Buffalo Mutual Insurance Company?

Ans. I was, and am now.

3rd int. Do you know Butler, King, and Thurlow, the libelants in this suit?

Ans. I do not.

4th int. Do you know any party here who represents them as attorney or agent?

Ans. Yes. Mr. Robert Rae presented letters from them and the certificate of insurance, marked Exhibit "A," for settlement.

5th int. Please state whether such settlement was made between yourself, acting for the insurance company, and Mr. Rae, acting for the libelants, when the same took place, if at all, and what were the terms of such settlement.

(Question objected to by proctor for libelants.)

Ans. Such settlement did take place, I suppose on the 24th of March, 1864. The amount paid and the manner of payment is expressed on the back of the certificate in a receipt. I advanced this money to Mr. Rae, on the ground that we were not legally

139 liable for the loss, but that I would pay to the extent of our insurance, and that the parties should prosecute for the loss, and repay us if they recovered.

6th int. Was it a part of the arrangement, referred to by you in

your last answer, that Mr. Rae should file the libel in this case for the benefit of the insurance company?

(Question objected to by proctor for libelants.)

Ans. It was agreed that he should prosecute the claim, and if he recovered, he should repay the insurance company.

7th int. In pursuance of that understanding and as a part thereof, did Mr. Rae, on behalf of King, Butler & Thurlow, execute to the insurance company the paper hereto annexed, marked Exhibit "B?"

(Question objected to by proctor for libelants.)

Ans. He did.

8th int. By whom, if you know, has the expenses of the libelants in this case been paid?

Ans. I am not aware of any expense but depositions that were paid. The Buffalo Mutual Insurance Company paid for some depositions in the case taken here.

SAM. T. ATWATER.

140 *Certificate of commission.*

UNITED STATES OF AMERICA, *Northern District of Illinois*:

I, Azariah T. Galt, a notary public, duly commissioned and qualified for the city of Chicago, in said district, do hereby certify that the above and foregoing deposition was taken before me, pursuant to the annexed notice.

I further certify that on the said 22nd day of March, A. D. 1866, I was attended by Hon. S. A. Goodwin, proctor for the respondent, and by Rob't Rae, esq., proctor for libelants, and by the said witness, who is of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned and sworn, to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and the deposition was by me reduced to writing in the presence of the said witness, and from his statement, and after carefully reading the same to the said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand open into the court, for which the same was taken.

And I do further certify that I am not of counsel nor proctor for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption; and I further certify that the annexed papers, marked Exhibit "A" and "B," are the same referred to by the witness in the foregoing deposition.

141 In testimony wherof I have hereunto set my hand and notarial seal, this 22d day of March, A. D. 1866.

AZARIAH T. GALT, *Notary Public.*

[5-cent rev. stamp, cancelled]

Endorsed: Filed April 7, 1866. Wm. H. Bradley, cl'k.

142 On this day, to wit, the fourth day of October, 1866, there was filed in the office of the clerk of the District Court a stipula-

tion in relation to testimony between the proctors for the parties, in the words and figures following, to wit:

U. S. District Court, N. D. Ill.

Stipulation as to evidence.

IN THE MATTER OF THE LIBELS FILED
vs.
PROPELLER LADY FRANKLIN AND proceeds of sale. } In admiralty.

It is agreed that the testimony taken heretofore in behalf of Albert E. Goodrich, as claimant of the propeller Lady Franklin in the respective cases of the libels there filed, shall apply to and may be used in the subsequent cases of libels or petitions filed by either of us against said propeller or the proceeds of sale thereof, with the same force and effect as if taken in such cases seperately.

Dated March 27, 1866.

WAITE, TOWNE & CLARKE.
ROB'T ROE,
Per T. J. R.

Endorsed: Filed Oct. 4th, 1866. Wm. H. Bradley, cl'k.

143 On this day, to wit, the fifth day of October, 1866, was filed in the office of the clerk of said court a stipulation in relation to testimony in the words and figures following, to wit:

U. S. Dist. Court, N. Dis. of Ills.

Stipulation as to evidence.

WM. L. SOUTHARD
vs.
PROCEEDS OF STEAMER LADY FRANKLIN. } In admiralty.

It is stipulated and agreed that the deposition of H. Courtney, taken in the above case, shall and may be used in the case of King, Butler & Thurlow *vs.* The said steamer.

R. RAE, *Proctor.*

Endorsed: Filed Oct. 5th, 1866. Wm. H. Bradley, cl'k.

144 On this day, to wit, the 6th day of March, A. D. 1867, came said libelants, by their proctors, and filed in said clerk's office their appeal bond in said entitled which is in words and following, to wit:

Appeal bond of libellants to Circuit Court.

Whereas an appeal has been taken to this court from the District Court of the United States in the northern district of Illinois, in a certain cause wherein A. S. King, A. Butler and C. Thurlow are appellants and the proceeds of the sale of the steamer Lady Franklin are appellee, and the said appelants have been ordered to give security in the sum of five hundred dollars for the payment of all damages and costs on the appeal to this court and in the Supreme Court:

145 Now, therefore, the stipulators undersigned hereby stipulate in the said sum of five hundred dollars to pay all damages and costs on the appeal in this court and in the Supreme Court in case such appeal shall intervene.

ROB'T RAE.
SAM. T. ATWATER.

Taken and acknowledged this sixth day of March, 1867.

JOHN C. REILY,
Notary Public for the City of Chicago.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Samuel T. Atwater and Robert Rae, being duly sworn, depose and say that they reside in the northern district of Illinois and are worth one thousand dollars over all their debts and liabilities.

SAM. T. ATWATER.
ROB'T RAE.

Sworn and subscribed to before me this sixth day of March, 1867.

JOHN C. REILY,
Notary Public for the City of Chicago.

Bail approved.

GOODWIN & LARNED,
For Claimant.

146 Approved.

THOMAS DRUMMOND.

Endorsed: Filed March 6th, 1867. Wm. H. Bradley, cl'k.

147 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley clerk of the District Court of the United States for said district, hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in the said court, in the cause in admiralty, wherein said Amos S. King et al. are libelants, and said proceeds of propeller Lady Franklin respondents, as the same remains of record in my custody, made up under the fifty-third rule of the Supreme Court of the United States in admiralty.

In testimony whereof, I have hereonto set my hand and affixed the seal of said District Court at my office, in Chicago, in said district this 25th day of March, A. D. eighteen hundred and sixty-seven, and of our independence the ninety-first year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5-cent rev. stamp, cancelled.]

Endorsed: Filed March 25th, 1867. Wm. H. Bradley, Clerk.

148 And afterwards to wit, on the eighth day of October, in the year of our Lord one thousand eight hundred and sixty-seven, the said entitled cause coming on to be heard, the following additional deposition taken on behalf of the claimant was read in evidence, and is in the words and figures following, to wit:

Be it remembered, that on application of Messrs. Goodwin & Larned, counsel for A. E. Goodrich, claimant in a suit now pending in the Circuit Court of the United States for the eighth circuit and northern district of Illinois, wherein Asa King is plaintiff, and the proceeds of propeller Lady Franklin is defendant, I, James T. Ely, a United States comm'r, in and for the northern district of Illinois, have this thirteenth day of May, A. D. 1867, at Chicago, in the district
149 and State aforesaid, having given notice to the said parties, proceeded to examine A. E. Goodrich as witness on behalf of the claimant in the aforesaid suit, and I certify that the reason for taking said deposition is, and the fact is that the same was taken by consent, and I do further certify that the said A. E. Goodrich being by me carefully examined, cautioned and duly sworn to testify the whole truth, says as follows in answer to the interrogatories respectively propounded to him by Mr. Goodwin.

Deposition of A. E. Goodrich.

Q. You are the claimant in this case, who has previously been examined in these cases as claimant against the propeller Lady Franklin?

A. Yes, sir.

Q. Will you please state who owned and had controll of the warehouse at Milwaukie at the wharf, where the Lady Franklin, the Water Witch, and other propellers in the Grand Trunk and Port Sarnia line stopped during the summer of 1864?

A. I did. I was the lessee of it.

Q. Did you appoint an agent, and put him in custody of the warehouse at that place?

A. I did.

Q. What was his name?

150 A. Hercules Courtney.

Q. Who paid him?

A. I paid him.

Q. What were the warehouse charges, if any, upon any goods, wares,

merchandize, or flour, that were deposited by any person in that warehouse, and to whom were they payable?

(Objected to for the reason that it should be shown by the books of the concern.)

A. The warehouse charge was five cents a barrel on flour, going into the house, that had to go on to boats to go from there. I charged a dollar a ton for goods landed at the warehouse from propellers going up to merchants in town.

Q. To whom did those receipts belong?

A. They belonged to me.

Cross-examination.

By Mr. Mitchell:

Q. Were there any other persons interested in the warehouse, or in the receipts of the warehouse at the time you have stated besides yourself?

A. No, sir.

A. E. GOODRICH.

151 Subscribed and sworn to before me, this 30th day of May, A. D. 1867.

[SEAL.] JAMES T. ELY,
U. S. Com'r for Nor. Dist. Ills.

Certificate of commissioner.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed separately by the said A. E. Goodrich in my presence, and that I was attended at the taking of the same by Mr. Goodwin for the claimant, and by Mr. Mitchell of Messrs. Rae & Mitchell for def't, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and notarial seal, this 30th day of May, A. D. 1867.

[SEAL.] JAMES T. ELY,
U. S Com'r for Nor. Dist. of Ill.

[5-ct. rev. stamp, cancelled.]

Endorsed: Filed Oct. 8th, 1867. Wm. H. Bradley, Cl'k.

152 And on the same day, to wit, the eighth day of October, in the year last aforesaid, the following proceedings were had in said entitled cause and entered of record, to wit:

TUESDAY, *October* 8, 1867.

Present: The Hon. David Davis, circuit judge; Hon. Thomas Drummond, district judge.

Hearing of cause and decree.

A. S. KING, A. BUTLER and C. THURLOW,
vs.
THE PROCEEDS PROPELLER LADY FRANKLIN. } Appeal.

Now come the parties by their proctors, and by agreement this cause is set down for hearing on the record of the pleadings and proofs as certified from the District Court, and the additional testimony taken in behalf of the claimant herein, and after hearing the same together with the arguments of the advocates of the respective parties, the court being now fully advised upon the matters submitted:

It is considered that the decree of the District Court be affirmed, and that the libel be dismissed at the costs of the libellants,
153 and that the respondents have and recover of the libellants and also of Robert Rae and Samuel T. Atwater, their stipulators, their costs by them about their defence in this behalf expended, amounting to the sum of forty-six dollars and eighty cents, and that they have execution therefor.

And the libellants, by their proctor, Robert Rae, esq., prays an appeal to the Supreme Court.

And afterwards, to wit, on the twenty-first day of October, in the year last aforesaid, came the said libellants by their proctor, and filed in said clerk's office their appeal bond in the above entitled cause, which is in the words and figures following, to wit:

Circuit Court of the United States of America, northern district of Illinois.

Appeal bond to Supreme Court.

A. S. KING, A. BUTLER, and C. THURLOW,
appellants,
vs.
PROCEEDS OF SALE OF PROPELLER LADY
Franklin, appellee.

154 Know all men by these presents, that we, Samuel T. Atwater and Robert Rae, of the city of Chicago, are held and firmly bound unto Albert E. Goodrich in the sum of five hundred dollars to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators jointly and severally firmly by these presents; sealed with our seals and dated the 21st day of October, A. D. 1867.

Whereas, the above-named appellants have prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the Circuit Court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL] SAM. T. ATWATER.
[SEAL] ROB. RAE.

155 Sealed and delivered and taken and acknowledged this 20th day of October, 1867, before me.

[SEAL] WM. H. CONDEN,
Notary Public.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

Samuel T. Atwater and Robert Rae being duly sworn, depose and say, and each for himself saith that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

SAM'L T. ATWATER.
ROB. RAE.

Sworn to this 21st day of October, 1867, before me.

[SEAL] WM. H. CONDEN,
Notary Public.

Endorsed: Approved: Thomas Drummond. Filed Oct, 21st, 1867. Wm. H. Bradley, Clerk.

156 On this day, to wit, the fourth day of December, 1867, there was filed in the office of the clerk of said court a stipulation for extending time in which to file transcript of record to the Supreme Court of the United States, which stipulation is in the words and figures following, to wit :

Sup. Court U. S.

Stipulation extending time to file transcript in Supreme Court U. S.

KING, BUTLER and THURLOW, appellant,
vs.
PROCEEDS OF SALE OF PROPELLER LADY Franklin.

The time for the clerk to return the record in this case is enlarged twenty days, and the same may be filed with the same force and effect as if filed within the first six days of the term.

Dec. 4, 1867.

GOODWIN & LARNED,
For Claimant.

Endorsed: Filed Dec. 4, 1867. Wm. H. Bradley, Cl'k.

157 *Certificate of clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss* :

I, William H. Bradley, clerk of the Circuit Court of the United States for said northern district of Illinois, do hereby certify the foregoing transcript, embracing one hundred and fifty-six pages, to be a true and correct copy from this record of all the proceedings which have been had in said court in said cause of A. S. King, A. Butler, and C. Thurlow, libellants' against the proceeds of the propeller Lady Franklin, as the original of the same now remain in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said northern district, this fourth day of December, A. D. 1867.

[SEAL] WM. H. BRADLEY, *Cl'k.*

[5-ct. rev. stamp, cancelled.]

158 The time for return and filing of this record is further extended ten days from date, with same force and effect as if within first six days of term, Dec. 24, 1867.

GOODWIN & LARNED,
For Appellee.

REC. 227—6

O

SUPREME COURT OF THE UNITED STATES.

No. 227.

A. S. KING, A. BUTLER, AND C. THURLOW, LIBELANTS AND APPELLANTS,

vs.

THE PROCEEDS OF THE SALE OF THE PROPELLER "LADY FRANKLIN."

ADDITION TO RECORD.—FILED NOVEMBER 1, 1869.

1 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Be it remembered that on this fifth day of May, in the year one thousand eight hundred and sixty-five, I, Daniel Goodwin, jr., a commissioner, duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did cause personally to appear before me, at my office in the city of Chicago, in said northern district of Illinois, Henry Ludwig, to testify on the part of the claimant in a certain cause depending in the
2 district court of the United States for the northern district of Illinois, at Chicago, wherein William L. Southard et al. are libellants, and the propeller Lady Franklin—Albert E. Goodrich, claimant—are respondents.

And the said Henry Ludwig was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid.

I carefully examined the said Henry Ludwig, and he did thereupon depose and say as follows, to wit:

1st int. What is your name, age, occupation; and where do you reside?

Ans. My name is Henry Ludwig; am thirty-two; am clerk in the hardware business; and reside in Milwaukie, Wisconsin.

2 int. Are you acquainted with the parties to this suit—libellants or claimant—and, if so, which of them, & how long have you known them?

Ans. I am acquainted with Captain Goodrich, but not with the libellants; have known Captain Goodrich seven years.

3 int. Where did you reside, and what was your occupation, in
3 November, 1863; and by whom were you employed?

Ans. I was book-keeper at Milwaukie, in H. Courtney's st'amboat office; was employed by H. Courtney.

(The counsel for the claimant here produces and files a notice and admission of service upon counsel for libellant to produce the original of Schedule A, annexed to the libel in the case of Southard et al. vs. the propeller Lady Franklin. Such notice is hereto annexed, and returned marked Schedule B.)

4 int. Look at Schedule A, annexed to the libel in this case, and state whether, at the time of its date, you executed a paper of which that is a substantial copy. If yea, state to whom the said paper was given, and why you executed such paper, and under what circumstances.

Ans. I think that Schedule A of the libel is a correct copy of a bill of lading given by me to Mr. Sanderson, or his clerk. The propeller Lady Franklin was expected to take a certain quantity of flour from our warehouse, and I gave him the bill of lading under the impression that the flour was going on the Lady Franklin.

4 5th int. Was the flour in the warehouse for different shippers, to be sent by Mr. Courtney on the first propeller?

(Objected to as leading, and withdrawn.)

5th int. How was the flour in the warehouse for the different shippers to be sent forward?

(Objected to, for the reason that the bill of lading, given at the time the flour was delivered, is the best evidence of the understanding of the parties.)

Ans. All flour delivered to us was to be shipped on whichever boat first came in—had capacity to take it; I mean of the Grand Trunk line, or boats running from Chicago and Milwaukie to the Grand Trunk dock, at Port Sarnia, Canada.

6th int. Was the propeller Water Wicth one of the boats refered to in your last answer?

Ans. Yes, sir.

7th int. How long before the date of Schedule A had the Water Witch sailed down the lakes?

Ans. She had sailed two days before.

8 int. Look at the book now exhibited to you, and marked "Exhibit A for claimant," and state what the same is or porports to be.

5 Ans. It is a book in which we copied the original bills of lading of goods shipped on our boats.

9th int. State whether you find in that book a copy of the bill of lading of the Water Witch on her last voyage refered to by you.

(Objected to.)

Ans. Page marked "Ex. B for claimant" is such a copy.

10th int. On what date in November, after the Water Witch, did the propeller Lady Franklin sail on the next trip down the lakes?

Ans. She completed her cargo, and was ready to sail on the tenth of November, 1863.

11 int. State whether you find in the book Exhibit A a copy of the bill of lading of the propeller Lady Franklin on her last voyage refered to by you.

(Objected to.)

Ans. Pages marked Ex. C, D, and E contain a copy of the original bill of lading.

12 int. Had you have been aware at the time you executed the paper, Schedule A, annexed to the libel, and gave it to Mr. Sanderson, or his clerk, as sworn to by you, that the one hundred barrels of flour
6 deposited in the warehouse by said Sanderson, to be shipped to Southered and Woodbury, Portland, had already been sent forward by the Water Witch, would you have made the said paper Schiedule A?

(Objected to.)

Answer. No, sir.

13th int. Under what impression did you make the said paper?

Ans. The flour in our warehouse at the time was destined for the propeller Lady Franklin, and when I made this paper, Schedule A, I was not aware that the propeller Water Witch had taken anything from our warehouse.

14th int. Do you know that the one hundred barrels of flour refered to in Schedule A, annexed to the libel, was ever delivered to, or put on board, the propeller Lady Franklin?

(Objected to.)

Ans. I know it was not.

Cross-examination by Robert Rea, esq., who appears on the part of the libellant, and makes the objection to the witness on the——

1st c. int. Do you remember of seeing the flour put on board of any boat?

7 Ans. The only evidence I have are the copies of bills of lading dilevered to the boats, as contained in the book refered to in my direct exammation marked Ex. A.

2 c. int. Are the bills of lading refered to here, and contained in the book marked Exhibit A, delivered to the shipper?

Ans. They are not. They are delivered to the clerk of the boat carrying the cargo contained in the bill of lading.

3rd c. int. Are bills of lading similar to that attached to the libel in this case the only bills of lading delivered to the shipper?

Ans. They are the only kind given to the shipper.

4th c. int. Was the flour mentioned in the bill of lading in this cause delivered at the usual and customary wharf of the line, and where the agent of said steamer and line deposited goods to be shipped on said steamer?

Ans. Yes, sir.

5 c. int. Was the wharf or warehouse where said goods were deposited in the custody, care, and control of said agent?

Ans. It was.

8 6 c. int. Is property delivered to said agents to be shipped by them on said line, and deposited on said wharf or in said warehouse, and for which bills of lading had been made or delivered, in the custody, care, and control of said agent?

(Objected to by consel for claimant, on the ground that it asks for a mere opinion or conclusion of law.

Mr. Rae withdraws the question.)

7th c. int. Who takes care of the goods which are stored in the warehouse?

Ans. Of course, the man who has charge of it.

8 c. int. Who had charge of the warehouse at that time?

Ans. H. Courtney.

9 c. int. Who was H. Courtney agent for?
Ans. The Grand Trunk and the Goodrich line of steamers.

Re-direct:

Int. Who owned the warehouse, and who was the warehouseman—who carried it on?
(Question withdrawn.)
Int. Were the steamboats that run in connection with the Grand Trunk road, which you call the Grand Trunk line, owned by the Grand Trunk road, or were such boats any way connected together?
9 Ans. They were all one interest, with the exception of certain boats which not run regularly in the Grand Trunk line, but were chartered to run to Port Sarnia, on account of the incapacity of the regular boats of the line to carry all freights offered.
Int. Was the Lady Franklin one of the last boats refered to by you, or not?
Ans. As I think she was.
Int. Did the Grand Trunk railroad own a single boat?
Ans. Not that I know of.
Int. Was either of those boats interested in the freights taken by any other boat, or did each receive pay alone for the freight it carried?
Ans. Each boat receives her pay separatly for what freight she carries.

HENRY LUDWIG.

Subscribed & sworn to before me this 5th day of May, A. D. 1865.
D. GOODWIN, JR.,
U. S. Commissioner.

10 U. S. dist. court, in admiralty, N. D. Ill.

WILLIAM L. SOUTHARD & NATHAN WOODBURY
v.
THE PROPELLER LADY FRANKLIN.

SIR: You are requested to produce, on the examination of witnesses in this case moticed, before D. Goodwin, jr., esq., for the 29th April, inst., the original of Schedule A, annexed to the libel in said case, or, in default thereof, secondary evidence will be given of the contents of such paper.
April 28, 1865. Yours, &c.,
GOODWIN, LARNED, & GOODWIN,
Proctors for Claimant.

To ROBERT RAE, Esq., *Proctor for Libellants.*

Schedule B.

D. GOODWIN, JR.,
U. S. Commissioner.

11 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Daniel Goodwin, jr., a commissioner, duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Con-

gress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judecial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness above named is material and necessary in the cause in the caption of the said deposition named.

I further certify that notification of the time and place of taking the said deposition was served on Robert Rae, esq., proctor for the libellants, to be present at the taking of the deposition, and to put
12 interrogatories, if he or they might think fit.

I further certify that on the fifth day of May, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by S. A. Goodwin, esq., proctor for the claimant, & said Robert Rae, esq., and by the said witness, who is of sound mind and lawful age; and the said witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and the deposition was reduced to writing in the presence of the said witness, and from his statements; and, after carefully reading the same to the said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the clerk of the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the events of the cause named in the said caption.

13 In testimony whereof, I have hereunto set my hand and seal this sixteenth day of May, in the year of our Lord one thousand eight hundred and sixty-five.

[SEAL.] D. GOODWIN, JR.,
U. S. Commissioner, duly appointed by the Circuit Court of the United States for the Northern District of Illinois.

(Endorsed:) Filed May 19, 1865.

WM. H BRADLEY, *Clk.*

14 U. S. district court, N. D. Ill.—In admiralty.

IN THE MATTER OF THE LIBELS FILED
vs.
PROPELLER LADY FRANKLIN & PROCEEDS OF SALE.

It is agreed that the testimony taken heretofore in behalf of Albert E. Goodrich, as claimant of the propeller Lady Franklin, in the respective cases of the libels there filed, shall apply to, and may be used in, the subsequent cases of libels for petitions filed by either of us against said propeller or the proceeds of sale thereof, with the same force and effect as if taken in such cases seperately.

Dated March 27, 1866.

WAITE, TOWNE & CLARKE.
ROBT RAE,
Per T. I. R.

(Endorsed:) Filed Oct. 4th, 1866.

WM. H. BRADLEY, *Clk.*

15 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete copy of the deposition of Henry Ludwig, taken May 5th, A. D. 1865, before Daniel Goodwin, jr., commissioner, at Chicago, Illinois, in said entitled cause of William L. Southard et al. against propeller Lady Franklin, &c., respondents; also of the stipulation to use testimony in the cases in said court against said respondents, as appears from the originals of the same, respectively, remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, at my office in thre city of Chicago, in said district, this 28th day of October, A. D. 1869, and of our independence the 94th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5-ct. int. rev. stamp, canceled.]

(Indorsed:) U. S. Supreme Court. 1868, Dec. term. No. 227. Propeller Lady Franklin ads. Amos S. King et al. Ludwig's testimony for appellee. Amendment to record.

Filed 1st November, 1869.

Supreme Court

OF THE UNITED STATES.

A. S. KING ET AL.,

vs.

Proceeds of the Sale of the Propeller LADY FRANKLIN.

No. 227.

REPLY BRIEF OF ROBERT RAE,

For Appellants.

The most important question which the court is to determine is what dignity and importance a receipt in a Marine Bill of Lading is to have in a dispute between the carrier and consignee, and while such receipts are open to explanation what degrees of proof will be required by the court before they are to be regarded as discredited. Are they liable to be contradicted by slight proof, or will the court be "earnest to uphold the negociability and sacredness of these ancient instruments of commerce."

In reply to point I of Respondent's brief, it is answered that it is conceded that if there never was any delivery of the flour to the agent of the steamer Lady Franklin, on account of the steamer, then there is no lien. But it is contended that Sanderson did so deliver it, and that his testimony and the Bill of Lading prove it. There is no dispute that Sanderson made a contract for one thousand barrels of flour to be delivered for shipment to Mr. Courtney, as agent of *some* boat, and that the line of boats which shippers were in the habit of shipping by was broken up at the time.

That the flour was in fact delivered into the control and possession of Courtney before the Bill of Lading was given.

That this part of the one thousand barrels did not go in the vessel for which the Bill of Lading was given, and that the shipper was wholly ignorant of that fact when he received the Bill of Lading, and when he drew a Bill of Exchange against it; and the consignee was also ignorant of such facts when he paid the draft.

The only dispute is whether the receipt in the Bill of Lading for the flour on account of the Lady Franklin is true or false.

The receipt is to stand unless contradicted by higher proof than itself.

Sanderson swears that he delivered it for the Lady Franklin in pursuance of an agreement. The agent of the steamer denies this; and that is all the testimony, if we omit the Bill of Lading.

The flour was in barrels and open to inspection, and when Ludwig signed the Bill of Lading he must have

understood the agreement, as Sanderson did, or he would not have given it.

Sanderson's statement is further corroborated by the fact that although he received other Bills of Lading of other dates for other cargoes of this one thousand barrels, yet they were all given as being received by the Lady Franklin; that which went on the Antelope, as well as that which went on the Watey Witch and Lady Franklin; and yet all at different dates and long before there was any object to invent any such agreement. The libellants then stand with the Bill of Lading in their hand and sustained by the testimony of Sanderson, while the respondent stands with the Bill of Lading against him, and relying only on the testimony of his agent that he did not make any such agreement.

The fact is that after the property was received by the agent of the steamer he made a mistake in the lading of it, and there being a loss, now tries to shield himself by denying his receipt.

The receipt is to relate to the time when the flour was delivered to the carrier, not to the time when the Bill of Lading was given. The agent might have converted it to his own use at the time the Bill of Lading was given, yet if he received it for *the steamer*, the steamer is liable, not by reason of the receipt in the Bill of Lading, but by force of the delivery to her authorized agent.

Of what character of proof is a receipt? It is certainly stronger than the mere parol affirmation of the facts by one witness. In *Stratton vs. Randall*, (2 Term. R. 371,) a receipt is said to be strong but not conclusive evidence. In *Fuller vs. Crittenden*, (9 Conn. 406,) the court say the

true view of the subject seems to be that such circumstances as would lead a court of equity to set aside a contract, (such as fraud, mistake or surprise,) may be shown at law to destroy the effects of a receipt; and Chancellor Kent takes this same view.

Can it then be said that the testimony of a witness which is flatly contradicted by a witness of equal credibility, and who stands uncontradicted by any other witness or fact, is stronger proof than a written acknowledgement of the fact?

A point is made that the libel alleges that Sanderson shipped, as agent of the libellants, and that therefore they are to be regarded as the parties to the Bill of Lading and as between them and the carrier it is open to explanation.

But the court will look to the good sense of the transaction, and the allegation under the testimony must be regarded as merely descriptive and not as a substantive allegation.

The testimony shows that Mr. Sanderson, a merchant miller, was in the habit of selling the libellants flour in pursuance of orders received from them by telegraph or in person, (fol. 43, cross-int. 1 and 2; fol. 67, cross-int. 1; fol. 80, cross-int. 1.)

That he delivered it at Milwaukee to the carrier, and drew upon the faith of the Bill of Lading for the purchase money.

This was his sole agency, and is the fact in every ordinary shipment. In the absence of any contract to the contrary, the delivery to the carrier by the vendor is delivery

to the vendee, and the property vests in the purchaser subject to the right of stoppage in transitu, &c.

But Sanderson having sent the Bill of Lading with the draft, the special property in law still remained in Sanderson, (*Jenkins vs. Brown*, 14 Ad. & El. N. S. 496,) so that the consignee did not in fact become the absolute owner until the payment of the draft, and that it was paid upon the faith of the Bills of Lading.

But if Sanderson was their agent then they are only chargeable with whatever knowledge he had of the mistake, and he swears he had none; but on the contrary the Bills of Lading were in accordance with the agreement, (fol. 41, int. 12, 13 and 14.)

ROBERT RAE,

For Appellant.

Supreme Court

OF THE UNITED STATES.

A. S. KING et al.

vs.

Proceeds of the Sale of the Propeller LADY FRANKLIN.

Dec. 7, 1868.
No. 227.

Points, &c., for Appellant,
by
ROBERT RAE.

STATEMENT OF THE CASE.

In the month of November, 1863, Edward Sanderson, a merchant at Milwaukee, made a contract with the agent of the propeller Lady Franklin, that the propeller would take on at port the of Milwaukee about 1,000 barrels of flour (fol. 39, Int. 6), and deliver the same to the various consignees at the places mentioned in the bills of lading. The whole of this flour was delivered to the agent of the steamer at the wharf of the steamer, and after such delivery, bills of lading were made and delivered to the shipper on behalf of the steamer.

The bills of lading were signed by the authorized agent of the steamer, the master never signing such bills (fols. 117, 11 & 12th & 13th x int.). Part of the flour was taken on board of the Lady Franklin, and the balance, notwithstanding the agreement to carry it on the Lady Franklin, was shipped on another steamer, and that portion, which is the subject matter of this suit, was taken on

board the Water Witch and was lost (fol. 114 x int. 9). The shipper, after delivering the flour into the hands of the agent of the steamer Lady Franklin, and after he had received a bill of lading for the same on behalf of the steamer, forwarded the bills of lading to the consignee, and upon the face of them drew a draft for the purchase of the property mentioned in said bills upon the purchaser, which draft, upon the faith of said bills of lading, was duly honored by them (fols. 41, int. 14, int. 15, fols. 66, int. 9, fols. 75 & 76). The flour was insured as property on board the steamer Lady Franklin, and the insurance company, while denying any legal liability for such loss, yet out of a high sense of good faith, advanced the amount of the loss, with the express understanding that the same was to be recovered of the steamer (fol. 70 x int. 7). The bills of lading stand unreformed by any Court of Chancery. These are all the material facts in the case.

FIRST.

The signing of the bills of lading by the authorized agent of the vessel, after delivery of the property into his possession and control, binds the vessel, and has the same force and effect as if signed by the master.

Rawles et al. v. Deshler, 3 Keys, 577.
Dowes *v.* Green, 24 N. Y. 638.
Schr. Emma Johnson, 1 Sprague, 527.
Coosa River Steamboat Co. *v.* Barclay, 30 Ala., 120.
Putnam v. Tilloson, 13 Met., 517.

In the case at bar the agent always signed the bills of lading, the master never (fols. 117, 11, 12, and 13 x int).

SECOND.

The owner of the vessel is estopped as against a consignee of the bill of lading, when either has taken it for a valuable consideration upon the faith of the acknowledgments which it contains, to deny the truth of the statements to which he has given credit by the signature of his agent, so far as these statements relate to matters which are, *or ought to be*, within his knowledge.

Sears *v.* Wingate, 3 Allen, 103.
Ward *v.* Whitney, 3 Sanf. 399.
Sutton *v.* Kethal, 1 Sprague, 309.
The Henry, 1 Blach *v.* H. 465 & 485.
Butler *v.* The Arrow, 1 Newb. 39.
1 Parson Shipping *v.* Ad. 190 & note 4.

In this case the consignee advanced on the faith of the bill of lading (fols. 41, int. 14, int. 15, & fols. 66, int. 9, & fols. 75 & 76.

THIRD.

The defendant intrusted Sanderson, the shipper, with the bills of lading after the receipt of the property and gave him the indicia of title. If there was any mistake, then the rule applies, that the libellants, having in good faith advanced their funds upon the security of the bill of lading, he who has occasioned by his acts such third persons to sustain a loss, must answer for it. Whenever one of two innocent parties must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.

Lichbarren *v.* Mason, 27 T. R. 63.
Rawle et al. *v.* Deshler, 3 Keys, 575. (This case is directly in point.)

FOURTH.

In Courts of Admiralty, like Courts of Law, parol testimony cannot be received to contradict the terms of a bill of lading.

3 Greenleaf, § 402.

a. Nor can Courts of Admiralty exercise Chancery powers to reform maritime contracts.

Andrews *v.* Essex In. Co., 3 Mason, 7.
The Ives, Newb. 205.
The Perseverance, 1 Black & H., 389.

FIFTH.

When a written contract is attacked on the grounds of containing some material mistake, the mistake must be established by "strong irrefragable evidence." One witness on each side directly contradicting the other is not in itself sufficient.

Lord Hardwicke says in such a case he would require "the strongest proof possible," which words Lord Eldon observes "leave a weighty caution to future judges."

Langley *v.* Brown, 2 Ack., 203.
Royal Ex. Ins. Co., 1 Ves. B. 18.

And in Shelburne *v.* Inchiquin (1 B. C. C., 34,) Lord Thurlow demanded "strong irrefragable evidence," and Mr. Adams in his work on Equity tells us that "it would be difficult to support the allegation of mistake, if the defendant positively denied it, and there were nothing to depend on but the recollection of witnesses."

Adams' Equity, star page 171.

The preliminary or parol contract of affraightment made by Sanderson shows that 1,000 barrels of flour were to be delivered to the steamer Lady Franklin, and to no other steamer. This is abundantly proved by Sanderson,

who has no interest in the event of the suit, and is made probable by the statement of Mr. Ludwig that he understood from Mr. Courtney that it was to go by the Lady Franklin, and it is made certain by the bills of lading themselves.

Mr. Courtney denies this, and attempts by parol evidence to contradict the bill of lading, and endeavors to establish that the flour was to go by the first boat. Now all the bills of lading for the whole 1,000 barrels were given by the Lady Franklin, and delivered to the shipper; this shows it was to go by one boat and not several; and Sanderson tells us, at folios 45, 47, and 57, that the line was broken up, and that shipper would not ship unless under special contract, that the cargo was to go by some particular boat, and in this case the Lady Franklin was the boat agreed upon.

The evidence of Sanderson and the agent of the boat cannot be reconciled, and in such cases the onus lies upon those who assert that the contract contains a mistake to prove it by a preponderance of evidence.

SIXTH.

The whole of the flour was delivered by the shipper into the custody and control of the agent of the steamer upon her wharf, and after such delivery bills of lading were made by the authorized agent of the steamer and delivered to the shipper, and the goods became bound to the vessel for the stipulated freight.

The Court below seemed impressed with the fact that this part of the shipment of the 1,000 barrels never reached the *hold* of the vessel; but this Court, in the case of the bark Edwin, where the question directly arose, and, indeed, was the only question in the case, disposed of it and fully established the doctrine that "there is no necessary physical connection between the cargo and the ship as a foundation upon which to rest the liability"—the custody and control of the agents of the vessel over

the cargo being the foundation of the reciprocal liens of vessel to the cargo and cargo to the vessel. This case so fully discusses the question and answers all the preceding decisions on this subject, that it ought not to be regarded any longer as an open question.

Bark Edwin, 24 How. 393.

ROBERT RAE,
Proctor for Libellants and Appellants.

Supreme Court of the United States.

PROPELLER LADY FRANKLIN, &c.,

ads.

AMOS S. KING. ET. AL.,

Appellants.

BRIEF AND POINTS FOR APPELLEE,

BY

S. A. GOODWIN.

CHICAGO:

OAKLEY & SON, LAW PRINTERS, 45 MCCORMICK'S BUILDING,

1869.

Supreme Court of the United States.

Supreme Court of the United States.

PROPELLER LADY FRANKLIN,

ads.

AMOS S. KING, *et al.*, APPELLANTS.

BRIEF AND POINTS FOR APPELLEE.

This is an appeal from a decree of the Circuit Court of the Northern District of Illinois, in Admiralty, dismissing the Libel in this case.

The Libel was filed in the District Court, June 15, 1865, by King, Butler & Thurlow, alleging that the Libellants, on the 9th day of November, 1863, "*by their Agent, Edward Sanderson*," at Milwaukee, on Lake Michigan, caused to be delivered to the said steamer 340 barrels of flour, branded "Fulton Mills," to be transported to Port Sarnia, St. Clair River, consigned to the Libellants at Portland, Maine; that the Libellants received from H. Courtenay, Agent, a bill of lading therefor, annexed; that 290 barrels of the flour were never delivered, and the Libellants claim the value thereof as a lien on the Lady Franklin.

The claimant, Albert E. Goodrich, answered, alleging that at the time referred to in the Libel, he was the general owner of the Lady Franklin and Joseph F. Kirkland the special owner, and in possession by virtue of a conditional sale of the vessel of which he, the claimant, became absolute owner by re-delivery before her arrest and sale in this Court. The claimant's answer then denied that the flour in question was ever delivered to, or shipped on board of said Steamer.

The facts proved in the case were as follows, viz :

On the 10th July, 1863, Albert E. Goodrich was the owner of the Steamer Lady Franklin, an enrolled and licensed Screw Propeller of 341 tons burden, engaged in the Lake service. On that day he sold the vessel conditionally to Joseph F. Kirkland for $28,000.00, of which $10,000 was paid down and the balance was to be paid in eighteen months, $1,000 per month, and then a bill of sale was to be executed. Possession was given to Kirkland immediately, and he from that time ran the vessel, as owner, in the Lake trade, hiring his own Master and crew, until October 10, 1864, when she was re-delivered to Goodrich by Kirkland for default in payment of the consideration money.

After Kirkland took possession of the Lady Franklin, he put her on to what was called the Grand Trunk Line, with the Montgomery, B. F. Wade, Antelope, Water Witch and Winslow, Propellers, running in connection with the Grand Trunk Railway from Milwaukee to Port Sarnia.

Albert E. Goodrich owned a wharehouse at the wharf where the propellers in the Grand Trunk Line stopped, of which Hercules Courtenay was agent, appointed and paid by Goodrich. This warehouse was for the receipt and storage of all freight going by said boats, or brought by them, and Good-

rich's charges were five cents a barrel on flour stored to be shipped, and one dollar per ton for goods landed in the warehouse from the boats. H. Courtenay, the agent of the warehouse, also acted as agent for the said Grand Trunk Line, in engaging and shipping freight.

Edward Sanderson, a manufacturer of flour at Milwaukee, sold his flour to the Libellants, and Southard & Woodbury, of Portland, Maine. The custom was (carried through twenty-five shipments, in two years), to deliver the flour in the warehouse, as fast as made, and ordered for shipment by the Grand Trunk Line of steamers, to be sent forward by Courtenay, by the first practicable sailing propeller of said line. The flour was usually there about, from a day to one week, or two weeks, before shipment, dependent on the arrival of a boat; and the delivery at the warehouse, was by the contract between Sanderson and the Libellants, a delivery to the consignees, and the flour became their property.

On the shipment of each lot of flour upon the different Propellers, it was the habit of Courtenay to give to Sanderson a memorandum bill of lading in the same form, and signed in the same way as the bill claimed on, in this case.

In the last days of October and fore part of November, 1863, Sanderson delivered into the said warehouse 340 barrels flour, branded "Fulton" and 240 barrels branded "Arcade", for the Libellants, as also 100 barrels for Southard & Woodbury, branded "Fulton", to be shipped to Portland.

Of this 340 barrels "Fulton Mills" flour, *fifty* barrels were shipped by Courtenay Nov. 1st, 1863, on the steamer Antelope to the Libellants, and duly received by them. The residue, two hundred and ninety barrels, were shipped Nov. 7th, 1863, by Courtenay on the steamer Water Witch, also consigned to the Libellants. The Lady Franklin afterwards arrived, and was to sail on the 10th of the same month. And on the 9th,

Ludwig, a clerk in the warehouse under Courtenay, in the absence of Courtenay, not knowing that the said 340 bbls. had been previously shipped on board the Antelope and the Water Witch, but supposing it still in the warehouse for shipment, without any examination, and by mistake, gave to Sanderson, (signing Courtenay's name to it), the memorandum bill of lading, exhibit A to King & Butler's testimony, relied upon by Libellants. No part of the said 340 barrels of flour was in fact received by, or shipped on board the Lady Franklin. She sailed on the 10th, and carried the said 240 barrels "Arcade" flour shipped to and received by the Libellants.

Copies of the actual bills of lading of the Antelope, Water Witch and Lady Franklin are given, (pages 52, 53 & 58) in the Record, showing this flour to have been actually shipped on the Antelope and Water Witch, and not at all on the Lady Franklin, and Courtenay's testimony affirmatively shows the mistake, and also that these shipments in November were made on the understanding with Sanderson, that the flour should be got through that fall, if possible, by the Water Witch, Lady Franklin, or such other steamer as could carry it, as always before. Sanderson, indeed feebly attempts to carry the idea that this flour was to have been shipped on the Lady Franklin only, she being the next boat expected. But he admits (Fol. 47) that Courtenay had "no reason to think from any thing that passed, that he (S.) would prefer him (C.) to detain the property specially for the Lady Franklin, if another safe or suitable steamer of the same line should leave for Port Sarnia before the arrival of the Lady Franklin."

The Water Witch foundered at sea on Lake Huron, and the flour shipped, was a total loss. All these facts were known to the Libellants when they filed the Libel in this case. King & Butler testified that the flour was to be delivered at Milwaukee, and that they paid Sanderson the amount on receipt of draft with said schedule A.

I

The facts in this case negative any liability, *in rem*, or lien upon the vessel. A maritime contract of affreightment, which shall bind the vessel to the merchandise, for the due performance of the contract, commences only with the delivery of the goods on board, or on a lighter or barge, belonging to and controlled by the boat, or into the custody of some officer of the boat, to be carried on board. No such delivery of the flour is shown in this case. It never was received on board the Lady Franklin, or into the custody of any officer or agent of the boat, to be carried on board. Courtenay was the warehouse man, and received the flour in store, as such. He held it as such warehouse man, not as agent for any, or either, or all of the different boats running in that line, but like any forwarding merchant, *pro hac vice*, the agent of the shipper to forward the merchandise by some of the boats of that line. In fact, he had forwarded this flour by the Antelope and Water Witch.

Angel & Ames on Carriers, 2 Ed. § 129.
Schooner Freeman *vs.* Buckingham, 18 How., 182.

The case cited of *Schooner Freeman* in this court, is conclusive on the Libellant's appeal. Here, as in that case, "there "was no cargo to which the ship could be bound, and there "was no contract for the performance of which the ship could "stand as security." And notwithstanding the bill of lading, it was held, there could be no *lien*. The cases cited in Westminister Hall, sustain this principle. (Grant *vs.* Norway, 2 Eng. Law and Eq. 337; Hubertsey *vs.* Ward, 18 Ibid. 551; Coleman *vs.* Riches, 29 Ibid., 323.)

The same principle is laid down in subsequent cases.

Vandewater *vs.* Mills, 19 How., 82.
Buckley *vs.* N. S. Cotton Co., 24 How., 386.

The obligation between ship and cargo is mutual and reciprocal, and does not take place until the cargo is on board. By this is meant, cargo delivered to the master for shipment.

II

It is now well settled, both in English and American law, that so far as the fact of the receipt of the goods, or the quantity received is concerned, the Bill of Lading is in the nature of a receipt, not conclusive between the ship owner and shipper, but open to explanation and evidence of the real facts.

Abbott on Shipping, 7th Am. Ed. 324, *m.*
1. Parson's Maritime Law, 137, *n* 2, and Cases cited.
Sch. Freeman *vs.* Buckingham, 18 How., 182, *supra.*
1 Greenl. Ev. § 305.

The paper on which the Libellant's rely, called a bill of lading, is in fact a memorandum receipt, given by Courtenay's clerk, by mistake. Although not designed in fraud, it was false in fact. No such flour was then in the warehouse, and none was received by the boat. The actual bill of lading, of the Lady Franklin, did not pretend it. The evidence on this point, brings the case within all the principles of the Schooner Freeman *vs.* Buckingham, *supra.* A false bill of lading, wheth-

er by mistake or fraud, is beyond the power of the master or other agent of the ship owner, and cannot be made to bind the vessel, especially under the circumstances of this case.

III.

There is no question of *bona fide purchase* in this case. Both King & Butler seem to look to some such idea in their testimony. The facts rebut it. The Libel itself claims that Sanderson shipped this flour as the agent of the Libellants. They both say, (Cross. Int. 2, Fols. 67, 80) that the flour was to be delivered to them at Milwaukee; and Sanderson says, (Fol. 53) that the flour belonged to the Libellants *on delivery at the warehouse.* The Libellants were then, the real shippers.

The decree dismissing the Libel should be affirmed.

GOODWIN, LARNED & TOWLE.

Proctors for Appellants.